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## **HEALTH AND SAFETY CODE**

### **DIVISION 104. ENVIRONMENTAL HEALTH**

#### **PART I. ENVIRONMENTAL HEALTH PERSONNEL**

##### **CHAPTER 4. PROFESSIONAL CERTIFICATION**

##### **ARTICLE 3. WATER TREATMENT PLANT OPERATOR**

###### **Section 106875. Certification of supervisors and operators**

The department shall, examine and certify persons as to their qualifications to supervise or operate water treatment plants. The certification shall indicate the classification of water treatment plant that the person is qualified to supervise or operate.

###### **Section 106876. Suspension and revocation**

(a) The department may suspend, revoke, or refuse to grant or renew any water treatment operator certificate or water treatment\_operator-in-training certificate to operate or supervise the operation of a water treatment plant or may place on probation or reprimand the certificate holder upon any reasonable grounds, including, but not limited to, any of the following:

- (1) The submission of false or misleading information on an application for a certificate or engaging in dishonest conduct during an examination.
- (2) The use of fraud or deception in the course of operating or supervising the operation of a water treatment plant or a water recycling treatment plant.
- (3) The failure to use reasonable care or judgment in the operation or supervision of the operation of a water treatment plant or a water recycling treatment plant.
- (4) The inability to perform operating duties properly in a water treatment plant or a water recycling treatment plant.
- (5) The failure to meet all requirements for certificate renewal.

(6) The conduct of willful or negligent acts that cause or allow the violation of the Safe Drinking Water Act (Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code) or the regulations and standards adopted pursuant to that act.

(7) Willfully or negligently violating or causing or allowing the violation of waste discharge requirements or permits issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) while operating a water recycling treatment plant.

(b) The department may suspend, revoke, or refuse to grant or renew any water distribution operator certificate to operate or supervise the operation of a water distribution system or may place on probation or reprimand the certificate holder upon any reasonable grounds, including, but not limited to, any of the following:

(1) The submission of false or misleading information on an application for a certificate or engaging in dishonest conduct during an examination.

(2) The use of fraud or deception in the course of operating or supervising the operation of a water distribution system.

(3) The failure to use reasonable care of judgment in the operation or supervision of the operation of a water distribution system.

(4) The inability to perform operating duties properly in a water distribution system.

(5) The failure to meet all requirements for certificate renewal.

(6) The conduct of willful or negligent acts that cause or allow the violation of the federal Safe Drinking Water Act (Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code) or the regulations and standards adopted pursuant to that act.

(c) Prior to revocation of a valid operator certificate, the department shall provide the certificate holder with an opportunity for a hearing before the department.

(d) For purposes of this section, "water recycling treatment plant" means a treatment plant that receives and further treats secondary and/or tertiary effluent from a wastewater treatment plant.

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**Section 106880. Examination**

The state department shall hold at least one examination each year for the purpose of examining candidates for certification.

**Section 106885. Certification required**

(a) All persons who operate or supervise the operation of water treatment plants shall possess a valid and current water treatment operator certificate or water treatment operator-in-training a certificate of appropriate grade in accordance with the regulations referred to in Section 106910.

(b) All persons who are in responsible charge of the water distribution system of a community water system or a nontransient noncommunity water system shall possess a valid and current water distribution operator certificate of the appropriate grade in accordance with the regulations referred to in Section 106910.

**Section 106890. Fees**

It is the intent of the Legislature that the program authorized pursuant to this article be entirely self-supporting, and for this purpose the department is authorized to establish fee schedules for the issuance, replacement, reinstatement, continuing education, and renewal of certificates that shall provide revenues that shall not exceed the amount necessary, but shall be sufficient, to recover all costs incurred in the administration of this article.

**Section 106892. Drinking Water Operator Certification Special Account**

There is in the State Treasury the Drinking Water Operator Certification Special Account. Fees collected pursuant to Section 106890 shall be deposited in the account created by this section.

**Section 106895. "Grandfather" clause**

(a) A person employed as a water distribution operator, as defined by Section 116275, who does not hold a certificate pursuant to Section 106885, may be issued an appropriate certificate provided that the water system with which the operator is employed has applied for the certificate within one year after the adoption of the regulations implementing this section.

(b) A certificate issued pursuant to subdivision (a) shall be effective only at the site at which the operator was employed. The operator shall meet all certification requirements and hold a valid certificate pursuant to Section 106885 in order to operate another system.

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(c) If the classification of the distribution system changes to a higher level, the certificate of the water distribution operator that was issued pursuant to subdivision (a) for that water distribution system is no longer valid.

(d) Any water distribution operator who is certified under subdivision (a) shall meet all of the requirements for renewal, including necessary training and the payment of fees.

#### **Section 106896. Evaluation of AWWA Distribution Operator Program**

The department shall evaluate the water distribution operator certification program of the California-Nevada Section of the American Water Works Association (CNAWWA) and issue an appropriate water distribution system operator certificate for those certified operators that have satisfied the provisions of this article and any regulations promulgated under this chapter.

#### **Section 106897. Reciprocity with other States**

On or after the effective date of regulations implementing this article, certificates issued by certification programs of other states shall be recognized as valid and sufficient under this article if the department determines that the program of the other state is consistent with this article and the regulations promulgated under this article.

#### **Section 106900. Education and training standards**

The department may approve courses of instruction provided by educational institutions, professional associations, public agencies, or private agencies for purposes of qualifying persons for initial certification, certification renewal, and recertification as a water treatment operator, water treatment operator-in-training, or water distribution operator.

#### **Section 106910. Regulation authority**

The department may adopt rules, regulations, and certification standards necessary to carry out the provisions of this article, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The rules, regulations, and standards shall include, but not be limited to, the following:

(a) The classification of treatment plants taking into consideration the plant size, character of the water being treated, type and degree of treatment, complexity of operation, and other physical conditions affecting the operation of the water treatment plant.

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- (b) The classification of distribution systems of community water systems and nontransient noncommunity water systems taking into consideration the complexity and size of the system.
- (c) Criteria and standards establishing the level of skill, knowledge, education, and experience necessary to operate successfully or to supervise successfully the operation of specific classes of water treatment plants so as to protect public health.
- (d) Criteria and standards establishing the level of skill, knowledge, and experience necessary to operate successfully or to supervise successfully the operation of specific classes of water distribution systems so as to protect the public health.
- (e) Criteria and standards for operator certification renewal including continuing education requirements.
- (f) Criteria and standards for recertification of an operator when the operator's certificate has lapsed.
- (g) Criteria and standards for the availability of designated water treatment operators for each operating shift.

## CHAPTER 5. SAFE RECREATIONAL WATER USE

### ARTICLE 1. RECREATIONAL USE OF RESERVOIRS

#### **Section 115825. Body contact restriction**

- (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.
- (b) Except as provided in Sections 115840, 115840.5, 115841, and 115842, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

#### **Section 115830. Recreation subject to regulation**

All water supply reservoirs of a public agency, whether heretofore or hereafter constructed, shall be open for recreational use by the people of this state, subject to the regulations of the department.

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### **Section 115835. Definitions**

Unless the context otherwise requires, the following definitions shall control the construction of this article:

- (a) "Multiple use" includes domestic, industrial, agricultural, and recreational uses.
- (b) "Public agency" means the state or any city, other than a chartered city, county, public district, or other public institution.
- (c) "Reservoir" does not include ditches, canals, or any similar type of water distributing facility.

### **Section 115840. San Diego County exception**

(a) In San Diego County, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant, unless both of the following conditions are satisfied:

(1) The water subsequently receives complete water treatment, including coagulation, flocculation, sedimentation, filtration, and disinfection, before being used for domestic purposes.

(2) The reservoir is operated in compliance with regulations of the department, as provided in Section 115830.

(b) The recreational use may be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir, if the conditions and restrictions do not conflict with regulations of the department and are designed to further protect or enhance the public health and safety.

### **Section 115840.5. Modesto Reservoir Exception**

(a) In the Modesto Reservoir, recreational uses shall not include recreation in which any participant has bodily contact with the water, unless both of the following conditions are satisfied:

(1) The water subsequently receives complete water treatment, in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection, before being used for domestic purposes. The disinfection shall include, but not be limited to, ozonation.

(2) The reservoir is operated in compliance with regulations of the department.

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(b) The recreational use may be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir or required by the department, if those conditions and restrictions do not conflict with regulations of the department, and are required to further protect or enhance the public health and safety. The department shall, prior to requiring any additional conditions and restrictions, consult with the entity operating the water supply reservoir regarding the proposed conditions and restrictions at least 60 days prior to the effective date of those conditions or restrictions.

(c) The Modesto Irrigation District shall file, on or before January 1, 2002, with the Legislature, a report on the recreational uses at Modesto Reservoir and the water treatment program. The report shall include, but not be limited to, all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) Levels of methyl tertiary butyl ether at various reservoir locations on a monthly basis.

(3) A summary of available monitoring in the Modesto Reservoir watershed for giardia and cryptosporidium.

(4) The sanitary survey of the watershed and water quality monitoring plan.

(5) An evaluation of recommendations relating to removal and inactivation of cryptosporidium and giardia as specified in the department water permit dated October 28, 1997.

(6) Annual reports provided to the department, as required pursuant to Sections I and IV of the department water permit dated October 28, 1997.

(7) An evaluation of the impact on source water quality due to recreational activities on the Modesto Reservoir, including any microbiological monitoring.

(8) A summary of any activities between the district and the county for operation of recreational uses and facilities in a manner that optimizes the water quality.

(9) The reservoir management plan and the operations plan.

(10) The annual water quality reports submitted to consumers each year.

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(d) If there is a change in operation of the treatment facility or a change in the quantity of water to be treated at the treatment facility, the department may require the Modesto Irrigation District to file a report that includes, but is not limited to, the information required pursuant to subdivision (c), and the district shall demonstrate to the satisfaction of the department that water quality will not be adversely affected.

#### **Section 115841. Nacimiento Reservoir**

Recreational activity in which there is bodily contact with the water by any participant shall continue to be allowed in Nacimiento Reservoir in accordance with all of the following requirements:

(a) Any agency that removes water from the reservoir for domestic use shall comply with any, or at a minimum, one of the following with regard to the water removed:

The water subsequently receives complete water treatment in compliance with all applicable department regulations, including coagulation, flocculation, sedimentation, filtration, and disinfection, before being used for domestic purposes.

(2) The water is discharged in a manner that allows percolation into a subsurface groundwater basin for subsequent extraction from only those groundwater wells that have been determined by the department not to be under the influence of surface water pursuant to Chapter 17 (commencing with Section 64650) of Division 4 of Title 22 of the California Code of Regulations and subsequently receives disinfection and complies with all applicable department regulations before being used for domestic purposes.

(3) The water is discharged in a manner that allows percolation into a subsurface groundwater basin for subsequent extraction from groundwater wells under the influence of surface water that receives treatment pursuant to Chapter 17 (commencing with section 64650) of Division 4 of Title 22 of the California Code of Regulations and complies with all applicable department regulations.

(b) The reservoir is operated in compliance with regulations of the department.

(c) The water stored for domestic purposes that may be excepted from the requirements of subdivision (b) of Section 115825 is removed from the reservoir by an agency for domestic purposes only in San Luis Obispo County and only in an amount for which that agency has a contractual right.

#### **Section 115842. Sly Park Reservoir**

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(a) Recreational activity in which there is bodily contact with the water by any participant is allowed in the Sly Park Reservoir provided that all of the following conditions are satisfied:

(1) Commencing on or before June 30, 2005, the water shall receive ongoing complete water treatment, including coagulation, flocculation, sedimentation, filtration, and disinfection, or an alternative filtration system that provides an equivalent degree of pathogen removal in compliance with all applicable department regulations before being used for domestic purposes. The disinfection shall include, but is not limited to, an advanced technology capable of inactivating organisms including virus, cryptosporidium, and giardia, to levels that comply with department regulations.

(2) The El Dorado Irrigation District conducts a monitoring program for e. coli, bacteria and giardia, and cryptosporidium organisms at various reservoir locations and at a frequency determined by the department.

(3) The reservoir is operated in compliance with regulations of the department.

(b) The recreational use of that reservoir shall be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir that are designed to further protect or enhance the public health and safety and do not conflict with regulations of the department.

(c) The El Dorado Irrigation District shall file, on or before January 1, 2005, with the department, a report on the recreational uses at Sly Park Reservoir and the water treatment program for that reservoir. That report shall include, but is not limited to, providing all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) A summary of available monitoring in Sly Park Reservoir watershed for giardia and cryptosporidium.

(3) The sanitary survey of the watershed and water quality monitoring plan.

(4) An evaluation of the impact on source water quality due to recreational activities on Sly Park Reservoir, including any microbiological monitoring.

(5) The reservoir management plan and the operations plan.

(6) The annual water reports submitted to the consumers each year.

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**Section 115845. Fees**

The public agency operating any water supply reservoir that is open for recreational use pursuant to this article may charge a use fee to cover the cost of policing the area around the reservoir, including the cost of providing the necessary sanitary facilities and other costs incidental to the recreational use of the reservoir.

**Section 115850. Terminal reservoir exemption**

This article does not apply to terminal reservoirs for the supply of domestic water.

**PART 12. DRINKING WATER**

**CHAPTER 1. DEFINITIONS (Reserved)**

**CHAPTER 2. POWERS AND DUTIES (Reserved)**

**CHAPTER 3. ENFORCEMENT AND PENALTIES (Reserved)**

**CHAPTER 4. CALIFORNIA SAFE DRINKING WATER ACT**

**ARTICLE 1. PURE AND SAFE DRINKING WATER**

**Section 116270. Legislative findings**

The Legislature finds and declares all of the following:

- (a) Every citizen of California has the right to pure and safe drinking water.
- (b) Feasible and affordable technologies are available and shall be used to remove toxic contaminants from public water supplies.
- (c) According to the State Department of Health Services, over 95 percent of all large public water systems in California are in compliance with health-based action levels established by the department for various contaminants.
- (d) It is the policy of the state to reduce to the lowest level feasible all concentrations of toxic chemicals that when present in drinking water may cause cancer, birth defects, and other chronic diseases.

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(e) This chapter is intended to ensure that the water delivered by public water systems of this state shall at all times be pure, wholesome, and potable. This chapter provides the means to accomplish this objective.

(f) It is the intent of the Legislature to improve laws governing drinking water quality, to improve upon the minimum requirements of the federal Safe Drinking Water Act Amendments of 1996, to establish primary drinking water standards that are at least as stringent as those established under the federal Safe Drinking Water Act, and to establish a program under this chapter that is more protective of public health than the minimum federal requirements.

(g) It is the further intent of the Legislature to establish a drinking water regulatory program within the State Department of Health Services in order to provide for the orderly and efficient delivery of safe drinking water within the state and to give the establishment of drinking water standards and public health goals greater emphasis and visibility within the state department.

#### **Section 116275. Definitions**

As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(b) "Department" means the State Department of Health Services.

(c) "Primary drinking water standards" means:

(1) Maximum levels of contaminants that, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Specific treatment techniques adopted by the department in lieu of maximum contaminant levels pursuant to subdivision (j) of Section 116365.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department that pertain to maximum contaminant levels.

(d) "Secondary drinking water standards" means standards that specify maximum contaminant levels that, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water that may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or that may otherwise adversely affect the public welfare. Regulations

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establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water that adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

(e) "Human consumption" means the use of water for drinking, bathing or showering, hand washing, or oral hygiene.

(f) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(g) "Person" means an individual, corporation, company, association, partnership, limited liability company, municipality, public utility, or other public body or institution.

(h) "Public water system" means a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system which are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system.

(3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(i) "Community water system" means a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents of the area served by the system.

(j) "Noncommunity water system" means a public water system that is not a community water system.

(k) "Nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.

(l) "Local health officer" means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

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(m) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water that the department determines, by regulation, represents an immediate danger to the health of water users.

(n) "State small water system" means a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

(o) "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per year.

(p) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(q) "Waterworks standards" means regulations adopted by the department that take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

(r) "Local primacy agency" means any local health officer that has applied for and received primacy delegation from the department pursuant to Section 116330.

(s) "Service connection" means the point of connection between the customer's piping or constructed conveyance, and the water system's meter, service pipe, or constructed conveyance. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection in determining if the system is a public water system if any of the following apply:

(1) The water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, and cooking or other similar uses.

(2) The department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable primary drinking water regulation is provided for residential or similar uses for drinking and cooking.

(3) The department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a passthrough entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

(t) "Resident" means a person who physically occupies, whether by ownership, rental, lease or other means, the same dwelling for at least 60 days of the year.

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- (u) "Water treatment operator" means a person who has met the requirements for a specific water treatment operator grade pursuant to Section 106875.
- (v) "Water treatment operator-in-training" means a person who has applied for and passed the written examination given by the department but does not yet meet the experience requirements for a specific water treatment operator grade pursuant to Section 106875.
- (w) "Water distribution operator" means a person who has met the requirements for a specific water distribution operator grade pursuant to Section 106875.
- (x) "Water treatment plant" means a group or assemblage of structures, equipment, and processes that treat, blend, or condition the water supply of a public water system for the purpose of meeting primary drinking water standards.
- (y) "Water distribution system" means any combination of pipes, tanks, pumps, and other physical features that deliver water from the source or water treatment plant to the consumer.

**Section 116280. Conditions for exclusion**

This chapter does not apply to a public water system that meets all of the following conditions:

- (a) Consists only of distribution and storage facilities and does not have any collection and treatment facilities.
- (b) Obtains all of its water from, but is not owned or operated by, a public water system to which this chapter applies.

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(c) Does not sell water to any person or user, except for the sale of water to users pursuant to Section 2705.5 of the Public Utilities Code through a submetered service system if the water supply is obtained from a public water system to which this chapter applies. By enacting this subdivision, it is not the intent of the Legislature to change existing law as to responsibility or liability for distribution systems beyond the mastermeter.<sup>1</sup>

### **Section 116282. Handwashing exemption**

Except as provided in this section, and except for the fee requirements of Section 116565, the department shall exempt from the water quality requirements of this chapter, any noncommunity water system serving a transient population that provides restrooms for employees or the public provided that the water system demonstrates to the department that it meets all of the following criteria:

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<sup>1</sup> Public Utilities Code, Mobilehome parks and multiple unit complexes

2705.5. Any person or corporation, and their lessees, receivers, or trustees appointed by any court that maintains a mobilehome park or a multiple unit residential complex and provides, or will provide water service to users through a submeter service system is not a public utility and is not subject to the jurisdiction, control, or regulation of the commission if each user of the submeter service system is charged at the rate which would be applicable if the user were receiving the water directly from the water corporation.

2705.6.(a) A mobilehome park which provides water service only to its tenants from water supplies and facilities which it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.

(b) Complaints filed pursuant to subdivision (a) are subject to the provisions of this code and to the Rules of Practice and Procedure of the commission governing complaints and commission investigations.

(c) The commission may afford rate relief or may order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.

(d) The public adviser created pursuant to Section 321 and necessary staff of the commission shall assist the complainant.

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(a) The water system is in compliance with either of the following:

(1) No water is served by the water system for any public human consumption other than for handwashing.

(2) If water is served for public human consumption other than for handwashing, bottled water from a source approved by the department is provided for the consumption other than handwashing.

(b) The water for handwashing is bacteriologically safe. This shall be ensured by sampling the water for coliform bacteria at least once each calendar year. The samples shall be analyzed and the results reported to the department in accordance with Section 64423.1 of Title 22 of the California Code of Regulations.

(c) The noncommunity water system is not a business regulated as a food facility under Section 113785.

#### **Section 116283. CURFFL Exemption**

This chapter shall apply to a food facility that is regulated pursuant to the California Uniform Retail Food Facilities Law only if the human consumption includes drinking of water.

#### **Section 116285. Irrigation canal exception**

Before August 6, 1998, this chapter shall not apply to an irrigation canal system if the owner or operator of the system certifies to the department, and notifies each user, in writing, that the water is untreated and is being furnished or supplied solely for agricultural purposes to either of the following:

(a) A user where the user receives the water, by pipe or otherwise, directly from the irrigation canal system.

(b) A person who owns or operates an integrated pipe system where the person receives the water, by pipe or otherwise, directly from the irrigation canal system.

"Irrigation canal system," as used in this section, means a system of water conveyance facilities, including pipes, tunnels, canals, conduits, pumping plants and related facilities operated to furnish or supply water for agricultural purposes where a substantial portion of the facilities is open to the atmosphere.

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**Section 116286. Water district exclusion**

(a) A water district, as defined in subdivision (b), in existence prior to May 18, 1994, that provides primarily agricultural services through a piped water system with only incidental residential or similar uses shall not be considered to be a public water system if the department determines that either of the following applies:

(1) The system or the residential or similar users of the system certify to the system that they are providing alternative water for residential or similar uses for drinking water and cooking to achieve the equivalent level of public health protection provided by the applicable primary drinking water regulations.

(2) The water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a passthrough entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

(b) For purposes of this section, "water district" means any district or other political subdivision, other than a city or county, a primary function of which is irrigation, reclamation, or drainage of land.

**Section 116287. Authority over water districts and constructed conveyances**

(a) The department, in implementing subdivision (s) of Section 116275 and Section 116286, shall place requirements on affected public water systems and water districts that are consistent with this chapter and the guidelines established by the United States Environmental Protection Agency for implementing comparable provisions of the federal Safe Drinking Water Act of 1996.

(b) The department, in making the determinations specified in paragraphs (2) and (3) of subdivision (s) of Section 116275 and subdivisions (a) and (b) of Section 116286, shall utilize criteria that are consistent with this chapter and those used by the United States Environmental Protection Agency in administering the comparable provisions of the federal Safe Drinking Water Act.

(c) The department shall periodically monitor and review the conditions under which a public water system, or a water district as defined in subdivision (b) of Section 116286, has met the requirements of this chapter pursuant to subdivision (s) of Section 116275 or Section 116286, or pursuant to the federal act, to ensure that the conditions continue to be met.

(d) The department may prescribe reasonable, feasible, and cost-effective actions to be taken by a public water system, water district, as defined in subdivision (b) of

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Section 116286, or users subject to subdivision (s) of Section 116275 or Section 116286 to ensure that alternative water or treated water provided by the water systems, water districts, or users pursuant to Section 116275 or 116286 will not be injurious to health.

(e) A notice prominently titled "Notice of Noncompliance with Safe Drinking Water Requirements" at the top of the document that states the requirements and actions prescribed by the department under subdivisions (a) and (d), describes the real property by assessors parcel number or legal description to which these requirements and actions apply, and names the record owners of that real property, may be recorded by the affected public water system or water district in the county where the real property is located. Recordation and proper indexing, as prescribed by law, shall provide constructive notice of these requirements and actions and shall not constitute a title defect, lien, or encumbrance. The public water system or water district shall provide notice of this recordation to the record owners of the real property by first-class mail, postage prepaid, to the address as shown on the latest county assessment roll. If the public water system or water district later determines that the record owners of the real property have complied with the requirements and actions prescribed by the department, the public water system or water district, within 10 days of that determination, shall record a subsequent notice titled "Notice of Compliance with Safe Drinking Water Requirements" that states that the "Notice of Noncompliance with Safe Drinking Water Requirements" has no further force or effect.

(f) A water district subject to this section shall annually publish a notice in a newspaper of general circulation describing any requirements and actions prescribed by the department to be taken by the water district and any record of compliance by the water district with these requirements and actions.

(g) This section shall not relieve a water district from complying with any other provisions of law.

#### **Section 116290. Agricultural exclusion**

Before August 6, 1998, in areas where the water service rendered by a person is primarily agricultural, and domestic service is only incidental thereto, this chapter shall not apply except in specific areas in which the department has found its application to be necessary for the protection of the public health and has given written notice thereof to the person furnishing or supplying water in the area.

The department may prescribe reasonable and feasible action to be taken by those persons or the users to insure that their domestic water will not be injurious to health.

#### **Section 116293. MCL for perchlorate**

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(a) On January 1, 2003, the Office of Environmental Health Hazard Assessment shall perform a risk assessment and, based upon that risk assessment, shall adopt a public health goal based exclusively on public health consideration for perchlorate using the criteria set forth in subdivision (c) of Section 116365.

(b) On or before January 1, 2004, the department shall adopt a primary drinking water standard for perchlorate found in public water systems in California in a manner that is consistent with this chapter.

## **ARTICLE 2. DEPARTMENT AND LOCAL RESPONSIBILITIES**

### **Section 116325. Department responsible for all public water systems**

The department shall be responsible for ensuring that all public water systems are operated in compliance with this chapter and any regulations adopted hereunder. The department shall directly enforce this chapter for all public water systems except as set forth in Section 116500.

### **Section 116330. Local primacy delegation**

(a) The department may delegate primary responsibility for the administration and enforcement of this chapter within a county to a local health officer authorized by the board of supervisors to assume these duties, by means of a local primacy delegation agreement if the local health officer demonstrates that it has the capability to meet the local primacy program requirements established by the department pursuant to subdivision (h) of Section 116375. This delegation shall not include the regulation of community water systems serving 200 or more service connections. The local primacy agreement may contain terms and conditions that the department deems necessary to carry out this chapter. The local primacy agreement shall provide that, although the local primacy agency shall be primarily responsible for administration and enforcement of this chapter for the designated water systems, the department does not thereby relinquish its authority, but rather shall retain jurisdiction to administer and enforce this chapter for the designated water systems to the extent determined necessary by the department.

(b) Any local health officer seeking a local primacy delegation shall submit an application to the department. The application shall be submitted by March 1, 1993, for local health officers seeking local primacy agreements for the 1993-94 fiscal year. Thereafter, the application shall be submitted by January 1, of the fiscal year immediately preceding the commencement of the fiscal year for which the local primacy delegation is sought. The application shall be in the format, and shall contain information, required by the department. The department shall approve the application for primacy if the

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department determines that the local health officer is capable of meeting the primacy program requirements established by the department.

(c) A local primacy delegation approved by the department shall remain in effect until any of the following conditions occur:

(1) The delegation is withdrawn by mutual agreement.

(2) The local primacy agency provides 120 day advance written notice to the department that it no longer wishes to retain local primacy.

(3) The department determines that the local primacy agency no longer complies with the department's local primacy program requirements. The department shall provide written notice to the local primacy agency and the board of supervisors and shall provide an opportunity for a public hearing prior to initiation of any local primacy revocation action by the department.

(d) The department shall evaluate the drinking water program of each local primacy agency at least annually. The department shall prepare a report of the evaluation and list any program improvements needed to conform to the department's local primacy program requirements. A copy of the evaluation report shall be provided to the local primacy agency and the board of supervisors. The local primacy agency shall be granted a reasonable amount of time to make any needed program improvements prior to the initiation of any local primacy revocation actions.

(e) To the extent funds are available in the Safe Drinking Water Account, the department shall provide the local primacy agency with an annual drinking water surveillance program grant to cover the cost of conducting the inspection, monitoring, surveillance, and water quality evaluation activities specified in the local primacy agreement. The annual program grant pursuant to this subdivision shall not exceed the amount that the department determines would be necessary for the department to conduct inspection, monitoring, surveillance, and water quality evaluation activities in the absence of a local primacy agreement for those systems in that county.

(f) The local primacy agency shall act for the department as the primary agency responsible for the administration and enforcement of this chapter for the specified public water systems and shall be empowered with all of the authority granted to the department by this chapter over those water systems.

### **Section 116340. State small water systems**

This chapter shall not apply to state small water systems except as provided under this section:

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- (a) The department shall adopt regulations specifying minimum requirements for operation of a state small water system. The requirements may be less stringent than the requirements for public water systems as set forth in this chapter.
- (b) The minimum requirements for state small water systems adopted by the department pursuant to subdivision (a) shall be enforced by the local health officer or a local health agency designated by the local health officer. In counties that do not have a local health officer, the requirements shall be enforced by the department. Local health agencies may adopt more stringent requirements for state small water systems than those specified in the state regulations.
- (c) The reasonable costs of the local health officer in carrying out the requirements of this section may be recovered through the imposition of fees on state small water systems by the local governing body in accordance with Section 101325.

**Section 116345. County monthly report and Department 3-year review**

- (a) The local health officer shall submit a report monthly to the department regarding the status of compliance with this chapter by the public water systems under the jurisdiction of the local health officer. The report shall be in a form and manner prescribed by the department.
- (b) The department shall review the public water system program of the local health officer at least every three years to assure compliance with this chapter. A report of the findings of the review along with any recommendations of the department shall be provided to the local health officer and the board of supervisors.

**ARTICLE 3. OPERATIONS**

**Section 116350. Department responsibilities**

- (a) The department shall administer the provisions of this chapter and all other provisions relating to the regulation of drinking water to protect public health.
- (b) The department shall also have the following responsibilities:
  - (1) Conduct research, studies, and demonstration projects relating to the provision of a dependable, safe supply of drinking water, including, but not limited to, all of the following:
    - (A) Improved methods to identify and measure the existence of contaminants in drinking water and to identify the source of the contaminants.

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(B) Improved methods to identify, measure, and assess the potential adverse health effects of contaminants in drinking water.

(C) New methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove or reduce contaminants.

(D) Improved methods for providing a dependable, safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing health-related hazards.

(E) Improved methods of protecting the water sources of public water systems from contamination.

(F) Alternative disinfection technologies that minimize, reduce, or eliminate hazardous disinfection byproducts.

(2) Enforce provisions of the federal Safe Drinking Water Act and regulations adopted pursuant thereto.

(3) Adopt regulations to implement this chapter.

(c) The department may conduct studies and investigations as it deems necessary to assess the quality of private domestic water wells.

**Section 116355. Safe drinking water plan**

- (a) Once every five years the department shall submit to the Legislature a comprehensive Safe Drinking Water Plan for California.
- (b) The Safe Drinking Water Plan shall include, but not be limited to, the following information:
  - (1) An analysis of the overall quality of California's drinking water and the identification of specific water quality problems.
  - (2) Types and levels of contaminants found in public drinking water systems that have less than 10,000 service connections. The discussion of these water systems shall include the following:
    - (A) Estimated costs of requiring these systems to meet primary drinking water standards and public health goals.
    - (B) Recommendations for actions that could be taken by the Legislature, the department, and these systems to improve water quality.
  - (3) A discussion and analysis of the known and potential health risks that may be associated with drinking water contamination in California.
  - (4) An evaluation of how existing water quality information systems currently maintained by local or state agencies can be more effectively used to protect drinking water.
  - (5) An evaluation of the research needed to develop inexpensive methods and instruments to ensure better screening and detection of waterborne chemicals, and inexpensive detection methods that could be used by small utilities and consumers to detect harmful microbial agents in drinking water.
  - (6) An analysis of the technical and economic viability and the health benefits of various treatment techniques that can be used to reduce levels of trihalomethanes, lead, nitrates, synthetic organic chemicals, micro-organisms, and other contaminants in drinking water.
  - (7) A discussion of alternative methods of financing the construction, installation, and operation of new treatment technologies, including, but not limited to user charges, state or local taxes, state planning and construction grants, loans, and loan guarantees.

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(8) A discussion of sources of revenue presently available, and projected to be available, to public water systems to meet current and future expenses.

(9) An analysis of the current cost of drinking water paid by residential, business, and industrial consumers based on a statewide survey of large, medium, and small public water systems.

(10) Specific recommendations, including recommendations developed pursuant to paragraph (6), to improve the quality of drinking water in California and a detailed five-year implementation program.

### **Section 116360. Cryptosporidium and Giardia**

(a) The department shall take all reasonable measures it determines necessary to reduce the risk to public health from waterborne illnesses in drinking water caused by cryptosporidium and giardia, to the extent those micro-organisms are not yet able to be adequately controlled through existing drinking water treatment and other management practices.

(b) The department shall directly conduct, or order the state's public water systems to conduct, comprehensive sanitary surveys, as present resources permit, to identify risks to public health from cryptosporidium and giardia.

(c) To thoroughly address the public health risks currently posed by cryptosporidium, in particular, the department shall ensure that its initial cryptosporidium action plan, that has been circulated to public water systems serving more than 1,000 service connections, is comprehensively implemented and shall devise and implement necessary strategies for protecting the health of individuals served by smaller public water systems from cryptosporidium exposure.

(d) On or before January 1, 1998<sup>2</sup>, the department shall submit a report to the Chairperson of the Assembly Environmental Safety and Toxic Materials Committee and of the Senate Toxics and Public Safety Management Committee. The report shall do all of the following:

(1) Describe the department's action to reduce human exposure to cryptosporidium and giardia from California drinking water and the extent to which implementation of the cryptosporidium action plan for larger water systems, and alternative actions for smaller water systems, have reduced the threat to public health from cryptosporidium contamination.

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<sup>2</sup> This report was due October 1, 1999 pursuant to Chapter 970 of the 1996 statutes.

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(2) Recommend additional actions necessary to adequately protect public health from waterborne diseases in California drinking water caused by micro-organisms, including any legislative changes necessary to ensure adequate protection of the public from exposure to cryptosporidium and other disease-causing micro-organisms in drinking water.

(3) Describe the progress of the California public water systems in the implementation of the cryptosporidium-related requirements of the federal Information Collection Rule, as set forth in the Federal Register on February 10, 1994, and the department's progress in implementing the cryptosporidium-related requirements of the federal Safe Drinking Water Act Amendments of 1996 (P.L. 104-182).

#### **Section 116361. Maximum contaminant level for arsenic**

(a) The Office of Environmental Health Hazard Assessment shall place a priority on the development of a public health goal for arsenic in drinking water, pursuant to subdivision (c) of Section 116365, sufficient to allow it to adopt the goal no later than December 31, 2002.

(b) Commencing January 1, 2002, the department shall commence the process for revising the existing primary drinking water standard for arsenic, and shall adopt a revised standard for arsenic not later than June 30, 2004. In considering the technological and economic feasibility of compliance with the proposed standard pursuant to paragraph (3) of subdivision (b) of Section 116365, the department shall consider emerging technologies that may cost-effectively reduce exposure to arsenic in drinking water.

(c) On or before December 31, 2002, the Secretary for Environmental Protection shall develop language regarding the health effects associated with the ingestion of arsenic in drinking water for inclusion in consumer confidence reports pursuant to Section 116470. On and after July 1, 2003, this language shall be included in the consumer confidence reports mailed or delivered to customers by each water system that measures arsenic in finished water at levels that exceed the applicable public health goal.

(d) The language developed by the Secretary for Environmental Protection for use in consumer confidence reports to describe the health effects associated with the ingestion of arsenic in drinking water shall be developed in accordance with primacy requirements described in subdivision (e) of Section 141.151 and subsections (b), (c), and (d) of Section 142.12 of Title 40 of the Code of Federal Regulations.

(e) Nothing in this section affects or changes the date for implementation of a revised arsenic standard by public water systems as required in Parts 9, 141, and 142 of Title 40 of the Code of Federal Regulations.

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**Section 116365. Criteria for primary standards**

(a) The department shall adopt primary drinking water standards for contaminants in drinking water that are based upon the criteria set forth in subdivision (b) and shall not be less stringent than the national primary drinking water standards adopted by the United States Environmental Protection Agency. Each primary drinking water standard adopted by the department shall be set at a level that is as close as feasible to the corresponding public health goal placing primary emphasis on the protection of public health, and that, to the extent technologically and economically feasible meets all of the following:

(1) With respect to acutely toxic substances, avoids any known or anticipated adverse effects on public health with an adequate margin of safety, and

(2) With respect to carcinogens, or any substances that may cause chronic disease, avoids any significant risk to public health.

(b) The department shall consider all of the following criteria when it adopts a primary drinking water standard:

(1) The public health goal for the contaminant published by the Office of Environmental Health Hazard Assessment pursuant to subdivision (c).

(2) The national primary drinking water standard for the contaminant, if any, adopted by the United States Environmental Protection Agency.

(3) The technological and economic feasibility of compliance with the proposed primary drinking water standard. For the purposes of determining economic feasibility pursuant to this paragraph, the department shall consider the costs of compliance to public water systems, customers, and other affected parties with the proposed primary drinking water standard, including the cost per customer and aggregate cost of compliance, using best available technology.

(c) (1) The Office of Environmental Health Hazard Assessment shall prepare and publish an assessment of the risks to public health posed by each contaminant for which the department proposes a primary drinking water standard. The risk assessment shall be performed using the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the field of epidemiology, risk assessment, and toxicology. The risk assessment shall contain an estimate of the level of the contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects, or that does not pose any significant risk to health. This level shall be known as the public health goal for the contaminant. The public health goal shall be

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based exclusively on public health considerations and shall be set in accordance with all of the following:

(A) If the contaminant is an acutely toxic substance, public health goal shall be set at a level at which no known or anticipated adverse effects on health occur, with an adequate margin of safety.

(B) If the contaminant is a carcinogen or other substance that may cause chronic disease, the public health goal shall be set at a level that, based upon currently available data, does not pose any significant risk to health.

(C) To the extent the information is available, the public health goal shall take into account each of the following factors:

(i) Synergistic effects resulting from exposure to, or interaction between, the contaminant and one or more other substances of contaminants.

(ii) Adverse effect the contaminant has on members of subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population when exposed to the contaminant in drinking water.

(iii) The relationship between exposure to the contaminant and increased body burden and the degree to which increased body burden levels alter physiological function or structure in a manner that may significantly increase the risks of illness.

(iv) The additive effect of exposure to the contaminant in media other than drinking water, including, but not limited to, exposures to the contaminant in food, and in ambient and indoor air, and the degree to which these exposures may contribute to the overall body burden of the contaminant.

(D) If the Office of Environmental Health Hazard Assessment finds that the currently available scientific data are insufficient to determine the level of a contaminant at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the public health goal shall be set at a level that is protective of public health with an adequate margin of safety. The level shall be based exclusively on health considerations and shall, to the extent scientific data are available, take into account the factors set forth in clauses (i) to (iv), inclusive of subparagraph (C), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, and toxicology. However, if adequate scientific evidence demonstrates that a safe dose response threshold for a

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contaminant exists, then the public health goal should be set at that threshold. The department may set the public health goal at zero if necessary to satisfy the requirements of this subparagraph.

(2) The determination of the toxicological endpoints of a contaminant and the publication of its public health goal in a risk assessment prepared by the Office of Environmental Health Hazard Assessment are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Environmental Health Hazard Assessment and the department shall not impose any mandate on a public water system that requires the public water system to comply with a public health goal. The Legislature finds and declares that the addition of this paragraph to the act amending this section during the 1999-2000 Regular Session of the Legislature is declaratory of existing law.

(3) (A) Beginning July 1, 2001, the Office of Environmental Health Hazard Assessment shall, at the time it commences preparation of a risk assessment for a contaminant as required by this subdivision, electronically post on its Internet web page a notice that informs interested persons that it has initiated work on the risk assessment. The notice shall also include a brief description, or a bibliography, of the technical documents or other information the office has identified to date as relevant to the preparation of the risk assessment and inform persons who wish to submit information concerning the contaminant that is the subject of the risk assessment of the name and address of the person in the office to whom the information may be sent, the date by which the information must be received in order for the office to consider it in the preparation of the risk assessment, and that all information submitted will be made available to any member of the public who requests it. Until July 1, 2001, the Office of Environmental Health Hazard Assessment shall send the notice to interested persons who request it by mail.

(B) Each draft risk assessment prepared by the Office of Environmental Health Hazard Assessment pursuant to this subdivision shall be made available to the public at least 45 calendar days prior to the date that public comment and discussion on the risk assessment are solicited at the public workshop required by Section 57003.

(C) At the time the Office of Environmental Health Hazard Assessment publishes the final risk assessment for a contaminant, the office shall respond in writing to significant comments, data, studies, or other written information submitted by interested persons to the office in connection with the preparation of the risk assessment. Any such comments, data, studies, or other written information submitted to the office shall be made available to any member of the public who requests it.

(D) Any interested person may, within 15 calendar days of the date the public workshop on a risk assessment is completed pursuant to Section 57003, request the

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Office of Environmental Health Hazard Assessment to submit the risk assessment to external scientific peer review prior to its publication. If the office receives such a request, the office shall submit the risk assessment to external scientific peer review in a manner substantially equivalent to the external scientific peer review process set forth in Section 57004, if the person requesting the external scientific peer review enters into an enforceable agreement with the office with 15 calendar days of making the request that requires the person requesting the external scientific peer review to fully reimburse the office for all of the costs associated with conducting the external scientific peer review.

(E) It is the intent of the Legislature that, if the Office of Environmental Health Hazard Assessment receives a request to submit a risk assessment prepared for a contaminant to which paragraph (2) of subdivision (e) applies to external scientific review, the peer review shall be conducted in a manner that does not affect the schedule for publishing the public health goal for that contaminant as set forth in paragraph (2) of subdivision (e).

(d) Notwithstanding any other provision of this section, any maximum contaminant level in effect on August 22, 1995, may be amended by the department to make the level more stringent pursuant to this section. However, the department may only amend a maximum contaminant level to make it less stringent if the department shows clear and convincing evidence that the maximum contaminant level should be made less stringent and the amendment is made consistent with this section.

(e) (1) All public health goals published by the Office of Environmental Health Hazard Assessment shall be established in accordance with the requirements of subdivision (c) and shall be reviewed at least once every five years and revised, pursuant to subdivision (c), as necessary based upon the availability of new scientific data.

(2) On or before January 1, 1998, the office shall adopt a public health goal for at least 25 drinking water contaminants for which a primary drinking water standard has been adopted by the department. The office shall adopt a public health goal for 25 additional drinking water contaminants by January 1, 1999, and for all remaining drinking water contaminants for which a primary drinking water standard has been adopted by the department by no later than December 31, 2001. A public health goal shall be published by the Office of Environmental Health Hazard Assessment at the same time the department proposes the adoption of a primary drinking water standard by the department for any newly regulated contaminant.

(f) The department or Office of Environmental Health Hazard Assessment may review, and adopt by reference, any information prepared by, or on behalf of, the United States Environmental Protection Agency for the purpose of adopting a national primary drinking water standard or maximum contaminant level goal when it establishes a California maximum contaminant level or publishes a public health goal.

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(g) At least once every five years after adoption of a primary drinking water standard, the department shall review the primary drinking water standard and shall, consistent with the criteria set forth in subdivisions (a) and (b), amend any standard if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health or attainment of the public health goal.

(2) New scientific evidence that indicates that the substance may present a materially different risk to public health than was previously determined.

(h) Not later than March 1 of every year, the department shall provide public notice of each primary drinking water standard it proposes to review in that year pursuant to this section. Thereafter, the department shall solicit and consider public comment and hold one or more public hearings regarding its proposal to either amend or maintain an existing standard. With adequate public notice, the department may review additional contaminants not covered by the March 1 notice.

(i) This section shall operate prospectively to govern the adoption of new or revised primary drinking water standards and does not require the repeal or readoption of primary drinking water standards in effect immediately preceding January 1, 1997.

(j) The department may, by regulation, require the use of a specified treatment technique in lieu of establishing a maximum contaminant level for a contaminant if the department determines that it is not economically or technologically feasible to ascertain the level of the contaminant.

#### **Section 116365.5. Maximum contaminant level for hexavalent chromium**

(a) The Department of Health Services shall commence the process for adopting a primary drinking water standard for hexavalent chromium that complies with the criteria established under Section 116365.

(b) The department shall report to the Legislature on its progress in developing a primary drinking standard for hexavalent chromium by January 1, 2003.

(c) The department shall establish a primary drinking water standard for hexavalent chromium on or before January 1, 2004.

#### **Section 116366. MTBE Costs**

(a) No public water system, or its customers, shall be responsible for remediation or treatment costs associated with MTBE, or a product that contains MTBE, provided,

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however, that the public water system shall be permitted as necessary to incur MTBE remediation and treatment costs and to include those costs in its customer rates and charges, necessary to comply with drinking water standards or directives of the State Department of Health Services or other lawful authority. Any public water system that incurs MTBE remediation or treatment costs may seek recovery of those costs from parties responsible for the MTBE contamination, or from other available alternative sources of funds.

(b) If the public water system has included the costs of MTBE treatment and remediation in its customer rates and charges, and subsequently recovers all or a portion of its MTBE treatment and remediation costs from responsible parties or other available alternative sources of funds, it shall make an adjustment to its schedule of rates and charges to reflect the amount of funding received from responsible parties or other available alternative sources of funds for MTBE treatment or remediation.

(c) Subdivision (a) shall not prevent the imposition of liability on any person for the discharge of MTBE if that liability is due to the conduct or status of that person independently of whether the person happens to be a customer of the public water system.

#### **Section 116367. Drinking Water Treatment and Research Fund**

(a) The Legislature finds and declares that oxygenated gasoline has contaminated groundwater and surface water used for drinking water purposes. The Legislature further declares that it is in the public interest to provide funding to pay for corrective actions needed to protect public health and the environment as a result of oxygenate contamination of drinking water.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Drinking water fund" means the Drinking Water Treatment and Research Fund created pursuant to subdivision (c).

(2) "Financial hardship" means a public water system does not have sufficient resources not otherwise dedicated for a specified purpose, including, but not limited to, debt service requirements, to pay for necessary treatment works, conduct an investigation into the source of contamination, or acquire alternate drinking water supplies and leave sufficient reserves available to enable the system owner or operator to address economic uncertainties to pay for contingencies.

(3) "Oxygenate" has the same meaning as oxygenate as defined in Section 25299.97.

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(4) "Public water system" means a public water system, as defined in Section 116275.

(c) The Drinking Water Treatment and Research Fund is hereby created in the State Treasury.

(d) The department may expend the money in the drinking water fund for all of the following purposes:

(1) To make payments to a public water system for the incremental costs of treating groundwater and surface water used for drinking water purposes that has been contaminated by an oxygenate if the level of contamination exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Treatment for surface water shall be for surface water that supplies water to a treatment facility for a water supply system that serves domestic uses.

(2) To make payments to a public water system for the costs of investigating the possible source of contamination when an oxygenate is detected at any level in groundwater supplies utilized by a public water system for drinking water purposes. Costs eligible for payment under this paragraph may include the cost of acquiring alternate drinking water supplies if the well is required to be shut down or its use curtailed during the investigation. Costs eligible for payment under this paragraph shall not include any costs incurred by a public water system to pursue cost recovery from responsible persons pursuant to subdivision (f).

(3) To make payments to a public water system for the incremental costs of acquiring alternate drinking water supplies to replace supplies contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Costs eligible for payment under this paragraph include the costs of connecting a public water system to another public water system or constructing a new drinking water well.

(4) To conduct research and develop cost-effective treatment technologies to treat drinking water contaminated by an oxygenate to meet primary or secondary drinking water standards and effective strategies to protect drinking water sources from contamination by oxygenates. The department shall not expend more than one million dollars (\$1,000,000) annually for these purposes and may enter into cooperative agreements with federal and state agencies, local agencies, or other persons to conduct research and development activities.

(5) To pay the administrative costs, not to exceed 5 percent, for the department to administer this section.

(e) Notwithstanding Section 7550.5 of the Government Code, the department shall report

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annually to the Governor and to the Legislature on any money provided to a public water system pursuant to this section.

(f) The department shall be reimbursed by a public water system that has received funds pursuant to this section, to the extent that the public water system receives payment from any source to cover the costs for which it received funding under this section. The public water system shall aggressively pursue cost recovery from responsible persons and, upon recovery, or within five years of the initial payment received, whichever occurs first, shall reimburse the department for funds received pursuant to this section, unless the public water system can demonstrate that, despite all reasonable efforts, recovery from a responsible party is not possible, or that a responsible party cannot be identified. The department shall transfer any reimbursements received from a public water system into the drinking water fund or the Underground Storage Tank Cleanup Fund, whichever provided the funds.

(g) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d) without regard to when the contamination occurred or when costs for treating or investigating the source of contamination or acquiring replacement water were incurred, except that a public water system may not receive more than three million dollars (\$3,000,000) from the drinking water fund in any fiscal year unless the public water system makes a showing of financial hardship.

(h) (1) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d), without requiring a public water system to first incur expenditures, if the department determines that a situation exists that requires prompt action by the public water system to protect human health or the environment, or the public water system makes a showing of financial hardship.

(2) Upon a showing of financial hardship, pursuant to paragraph (1), the public water system shall present the department with a work plan that specifies the estimated costs of treatment, constructing a new drinking water well, or obtaining an alternate water supply. The estimated costs of treatment or constructing a new well to provide replacement water shall be prepared by a registered civil engineer or other registered professional. The estimated costs for acquiring an alternate water supply, other than a new well, shall be substantiated by an identification of necessary capital facilities to convey the water to the public water system and a written offer by another entity to provide the alternate water supply.

(3) The department shall prescribe forms and procedures for claims filed pursuant to this section as necessary to ascertain eligibility for payment and validity of incremental costs based on generally accepted accounting principles. The department shall not require an applicant to prepare an economic feasibility study regarding the acquisition of an alternate water supply. The department may require a description of site-specific

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information, including the origin of contamination, the petroleum products released, and the status of cleanup and abatement activities at potential leaking underground storage tank sites if that information is available to the applicant.

(4) The department shall provide payment within 60 days of receiving a claim filed pursuant to this section.

(5) A claim shall be deemed true and correct if not audited by the department within three years of payment.

(i) The department, in evaluating claims submitted for payment from the drinking water fund, shall consider the findings of the University of California report regarding the assessment undertaken pursuant to Section 3 of Chapter 816 of the Statutes of 1997, as those findings relate to the assessment of the human health and environmental risks and benefits, if any, associated with the use of MTBE in gasoline. In particular, the department shall consider findings in the report regarding the evaluation of the costs and effectiveness of treatment technologies available to remove MTBE from drinking water.

(j) Any funds transferred to the drinking water fund pursuant to Section 25299.99 may be used for the purposes of this section only if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(k) (1) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

(2) The repeal of this section does not terminate any of the following rights, obligations or authorities, or any provision necessary to carry out these rights or obligations:

(A) The filing and payment of claims in the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(B) The resolution of any cost recovery action.

#### **Section 116367.5. Research Advisory Committee**

The department shall establish a Research Advisory Committee, which shall consist of 11 members. The department shall provide for the support staff and meeting facility needs of the committee. The committee shall meet as necessary to review requests for research projects pursuant to paragraph (4) of subdivision (d) of Section 116367. The committee members shall be appointed by the director and shall consist of the following members:

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- (a) Four members representing public water systems.
- (b) Four members representing entities paying into the Underground Storage Tank Cleanup Trust Fund created pursuant to Section 25299.50.
- (c) One member representing environmental interest groups.
- (d) One member representing consumer interest groups.
- (e) One member representing the department.

**Section 116370. Best available technology**

On or before January 1, 1998, the department shall propose, hold a public hearing, and adopt a finding of the best available technology for each contaminant for which a primary drinking water standard has been adopted. Thereafter, the department shall adopt a finding of the best available technology for each contaminant for which a primary drinking water standard has been adopted at the time the standard is adopted. The finding of the department shall take into consideration the costs and benefits of best available treatment technology that has been proven effective under full-scale field applications.

**Section 116375. Department authority to adopt regulations**

The department shall adopt regulations it determines to be necessary to carry out the purposes of this chapter. The regulations shall include, but not be limited to, the following:

- (a) The monitoring of contaminants, including the type of contaminant, frequency and method of sampling and testing, and the reporting of results.
- (b) The monitoring of unregulated contaminants for which drinking water standards have not been established by the department. The requirements shall be not less stringent than those adopted pursuant to paragraph (2) of subsection (a) of Section 1445 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300j-4 (a)(2)). Until the time that the department adopts regulations regarding the monitoring of unregulated contaminants, the department may, by order, require any public water system that has been shown to contain detectable levels of any unregulated contaminants to conduct periodic water analyses in accordance with conditions specified by the department. The water analyses shall be reported on a quarterly basis unless the department finds that more or less frequent analysis is necessary.
- (c) Requirements for the design, operation, and maintenance of public water systems, including, but not limited to, waterworks standards and the control of cross-connections,

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that the department determines are necessary to obtain, treat, and distribute a reliable and adequate supply of pure, wholesome, potable, and healthy water.

(d) Requirements for treatment, including disinfection of water supplies.

(e) Requirements for the filtration of surface water supplies at least as stringent as regulations promulgated pursuant to subparagraph (C) of paragraph (7) of subsection (b) of Section 1412 of the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-1 (b)(7)(C)).

(f) Requirements for notifying the public of the quality of the water delivered to consumers.

(g) Minimum acceptable financial assurances that a public water system shall be required to submit as a demonstration of its capability to provide for the ongoing operation, maintenance, and upgrading of the system, including compliance with monitoring and treatment requirements and contingencies. For privately owned systems not regulated by the Public Utilities Commission, the financial assurance may be in the form of a trust fund, surety bond, letter of credit, insurance, or other equivalent financial arrangement acceptable to the department.

(h) Program requirements for the conduct of the public water system program by a local health officer under a primacy delegation from the department as set forth in this chapter. The requirements shall include, but not be limited to, the issuance of permits, surveillance and inspections, reporting of monitoring and compliance data, and the taking of enforcement actions.

(i) Methods for determination of the number of persons served by a public water system for drinking water regulatory purposes.

(j) The adoption by the State Department of Health Services, in consultation with the State Water Resources Control Board and representatives from operators of public water systems, of emergency regulations for the uniform, scientific sampling, and analytical testing protocols for oxygenates as defined in subdivision (k) of Section 51010.5 of the Government Code.

### **Section 116377. Emergency regulations**

The department may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement amendments to this chapter. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and

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safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for not more than 180 days.

#### **Section 116379. Exclusion**

Notwithstanding Sections 116360, 116375, and 116450, public water systems are not required to observe the standards of subdivision (f) of Section 64435 of Title 22 of the California Code of Regulations.<sup>3</sup>

#### **Section 116380. Point-of-entry in lieu of centralized treatment**

In addition to the requirements set forth in Section 116375, the regulations adopted by the department pursuant to Section 116375 shall include requirements governing the use of point-of-entry treatment by public water systems in lieu of centralized treatment where it can be demonstrated that centralized treatment is not economically feasible.

#### **Section 116385. Monitoring authority**

Any person operating a public water system shall obtain and provide at that person's expense an analysis of the water to the department, in the form, covering those matters, and at intervals as the department by regulation may prescribe. The analysis shall be performed by a laboratory duly certified by the department.

#### **Section 116390. Laboratory accreditation requirement**

(a) No laboratory, other than a laboratory operated by the department, shall perform tests required pursuant to this chapter for any public water system without first obtaining a certificate issued by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

(b) No person or public entity of the state shall contract with a laboratory for environmental analyses for which the state department requires certification pursuant to this section, unless the laboratory holds a valid certificate.

#### **Section 116395. County evaluation of small public water systems**

(a) The Legislature finds and declares all of the following:

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<sup>3</sup> This subdivision has been repealed.

(1) The large water system testing program has discovered chemical contamination of the state's drinking water with increasing frequency.

(2) A significant number of California residents rely on the state's small water systems to provide their water.

(3) The small systems, because they tend to be located in outlying rural areas where pesticide use is prevalent, and because they draw their water from shallow aquifers, face a serious threat of contamination.

(4) Unchecked water sources that may be contaminated pose a potentially serious threat to the health of the citizens of California, particularly those living in outlying rural areas.

(5) It is in the interest of all Californians that a testing program for small public water systems be implemented and carried out as expeditiously as possible.

(b) For purposes of this section, "small public water system" means a system with 200 connections or less, and is one of the following:

(1) A community water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.

(2) A state small water system.

(3) A noncommunity water system such as a school, labor camp, institution, or place of employment, as designated by the department.

(c) The department shall conduct training workshops to assist health officers in evaluation of small public water systems for organic chemical contamination, and in sampling and testing procedures. The department shall, at a minimum, provide health officers with guidelines for evaluating systems and instructions for sampling.

(d) The department shall develop a schedule for conduct of the programs by the local health officers. The schedule shall establish a program to address first those systems with the most serious potential for contamination. The department shall enter into agreements with the local health agencies to conduct the necessary work to be performed pursuant to the schedule. The department shall begin the program no later than three months after September 19, 1985. All local health officers shall complete the evaluation, sampling, testing, review of sampling results, and notification to the public water systems within their jurisdiction in accordance with the agreements entered into with the department and within the schedule established by the department. All work required by this section shall be completed within three years after September 19, 1985.

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(e) In consultation with the department, the local health officer shall conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals. The evaluation shall include, but not be limited to:

(1) A review of the historical water quality data of each system to determine possible evidence of degradation.

(2) A review, to be coordinated with the State Water Resources Control Board, and the California regional water quality control boards, of past and present waste disposal practices that may potentially affect the respective well water supply.

(3) A review of other organic chemicals used in the water supply area that have potential health risks and that may have the potential for contaminating drinking water supplies because of environmental persistence or resistance to natural degradation under conditions existing in California.

(f) Based upon the evaluation of each system, the local health officers shall develop a sampling plan for each system within their jurisdiction. The health officer shall collect samples in accordance with the plan and shall submit the samples for analysis to a certified laboratory designated by the department. When applicable, the laboratory shall test water samples using the Environmental Protection Agency's 13 approved analytical techniques established under subdivision (h) of Section 304 of the Clean Water Act to qualitatively identify the complete range of contaminants in the same class as the specific contaminant or class of contaminants being analyzed.

(g) Within 10 days of the receipt from the laboratory of the testing results, the local health officer shall notify the small public water system, the department and the California regional water quality control board for that region of the results.

(h) Following a review of the testing results, the local health officer may order the public water system to conduct a periodic water sampling and analysis program in accordance with conditions specified by the local health officer. The department shall provide ongoing advice and assistance to local health officers in interpreting test results and determining appropriate notification and followup activities in those instances where contaminants are found.

(i) This section shall be operative during any fiscal year only if the Legislature appropriates sufficient funds to pay for all state mandated costs to be incurred by local agencies pursuant to this section during that year.

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**Section 116400. Periodic water analysis**

If the department determines that a public water system is subject to potential contamination, the department may, by order, require the public water system to conduct a periodic water analysis in accordance with conditions specified by the department. The water analysis shall be reported on a quarterly basis, unless the department finds that reasonable action requires either more or less frequent analysis.

**Section 116405. Backflow exception**

(a) In counties with a population not exceeding 500,000 persons as shown by the 1970 federal decennial census, any public water system supplying both domestic and untreated irrigation water in separate pressurized systems that were in existence prior to January 1, 1990, and that is operated by an incorporated or unincorporated association of users, shall not require protection against backflow into the domestic water system from premises receiving both the water services and having available no other source of water, except where interconnection between the systems has taken place. It shall be a misdemeanor for any person to knowingly interconnect the water services on a user's premises without installing a backflow protection device approved by the state department.

(b) Regulations of the state department requiring the installation of backflow protection shall not be continued to require the installation of the protection in any public water system described in subdivision (a), except as provided in that subdivision.

**Section 116410. Fluoridation requirement**

(a) In order to promote the public health through the protection and maintenance of dental health, the department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, requiring the fluoridation of public water systems. By July 1, 1996, each public water system with at least 10,000 services connections shall provide to the department an estimate of the total capital costs to install fluoridation treatment. The regulations adopted by the department shall take effect on January 1, 1997.

(b) The regulations shall include, but not be limited to, the following:

(1) Minimum and maximum permissible concentrations of fluoride to be maintained by fluoridation of public water systems.

(2) The requirements and procedures for maintaining proper concentrations of fluoride, including equipment, testing, recordkeeping, and reporting.

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(3) Requirements for the addition of fluorides to public water systems in which the natural level of fluorides is less than the minimum level established in the regulations.

(4) A schedule for the fluoridation of public water systems with at least 10,000 service connections, based on the lowest capital cost per connection for each system.

**Section 116415. Fluoridation exemption**

(a) (1) A public water system is not required to comply with Section 116410, or the regulations adopted thereunder by the department, in either of the following situations:

(A) If the public water system is scheduled to implement a fluoridation program pursuant to paragraph (4) of subdivision (b) of Section 116410 and funds are not available to the public water system sufficient to pay the capital and associated costs from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(B) If the public water system has obtained the capital and associated funds necessary for fluoridation as set forth in subparagraph (A), however, in any given fiscal year (July 1-June 30) funding is not available to the public water system sufficient to pay the noncapital operation and maintenance costs described in subdivision (g) from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(2) Each year the department shall prepare and distribute a list of those water systems that do not qualify for exemption under this section from the fluoridation requirements of Section 116410. This list shall include water systems that have received, or are expected to receive, sufficient funding for capital and associated costs so as to not qualify for exemption under subparagraph (A) of paragraph (1), and have received, or anticipate receiving, sufficient noncapital maintenance and operation funding pursuant to subdivision (g), so that they do not qualify for exemption under subparagraph (B) of paragraph (1).

(3) Any water system that has acquired the funds necessary for fluoridation as set forth in subparagraph (A) of paragraph (1), and is not included in the list pursuant to paragraph (2), may elect to exercise the option not to fluoridate during the following fiscal year pursuant to subparagraph (B) of paragraph (1) by so notifying the department by certified mail on or before June 1.

(4) The permit issued by the department for a public water system that is scheduled to implement fluoridation pursuant to paragraph (4) of subdivision (b) of Section 116410 shall specify whether it is required to fluoridate pursuant to Section 116410, or whether it

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has been granted an exemption pursuant to either subparagraph (A) or subparagraph (B) of paragraph (1).

(b) The department shall enforce Section 116410 and this section, and all regulations adopted pursuant to these sections, unless delegated pursuant to a local primary agreement.

(c) If the owner or operator of any public water system subject to Section 116410 fails, or refuses, to comply with any regulations adopted pursuant to Section 116410, or any order of the department implementing these regulations, the Attorney General shall, upon the request of the department, institute mandamus proceedings, or other appropriate proceedings, in order to compel compliance with the order, rule, or regulation. This remedy shall be in addition to all other authorized remedies or sanctions.

(d) Neither this section nor Section 116410 shall supersede subdivision (b) of Section 116410.

(e) The department shall seek all sources of funding for enforcement of the standards and capital cost requirements established pursuant to this section and Section 116410, including, but not limited to, all of the following:

(1) Federal block grants.

(2) Donations from private foundations expenditures from governmental sources shall be subject to specific appropriation by the Legislature for these purposes.

(f) A public water system with less than 10,000 service connections may elect to comply with the standards, compliance requirements, and regulations for fluoridation established pursuant to this section and Section 116410.

(g) Costs, other than capital costs, incurred in complying with this section and Section 116410, including regulations adopted pursuant to those sections, may be paid from federal grants, or donations from private foundations, for these purposes. Each public water system that will incur costs, other than capitalization costs, as a result of compliance with this section and Section 116410, shall provide an estimate to the department of the anticipated total annual operations and maintenance costs related to fluoridation treatment by January 1 of each year.

(h) A public water system subject to the jurisdiction of the Public Utilities Commission shall be entitled to recover from its customers all of its capital and associated costs, and all of its operation and maintenance expenses associated with compliance with this section and Section 116410. The Public Utilities Commission shall approve rate increases for an owner or operator of a public water system that is subject to its

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jurisdiction within 45 days of the filing of an application or an advice letter, in accordance with the commission's requirements, showing in reasonable detail the amount of additional revenue required to recover the foregoing capital and associated costs, and operation and maintenance expenses.

## **ARTICLE 4. EXEMPTIONS AND VARIANCES**

### **Section 116425. Exemptions**

(a) The department may exempt any public water system from any maximum contaminant level or treatment technique requirement if it finds all the following:

(1) The public water system was in operation, or had applied for a permit to operate, on the effective date of the maximum contaminant level or treatment technique requirement.

(2) Due to compelling factors, which may include either of the following factors, the public water system is unable to comply with the maximum contaminant level or treatment technique requirement or to implement measures to develop an alternative water supply:

(A) Economic factors.

(B) The entire service area of the public water system consists of a disadvantaged community, as defined under Section 1452(d) of the federal Safe Drinking Water Act (42 U.S.C. Sec. 300g-5), and meets the affordability criteria established by the department, after review and public hearing.

(3) The granting of the exemption will not result in an unreasonable risk to health.

(4) Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with this chapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) If the department grants a public water system an exemption for a primary drinking water standard under subdivision (a), the department shall prescribe, at the time an exemption is granted, a schedule for both of the following:

(1) Compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted.

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(2) Implementation by the public water system of interim control measures the department may require for each contaminant or treatment technique requirement for which the exemption was granted.

(c) Any schedule prescribed by the department pursuant to this section shall require compliance by the public water system with each contaminant level or treatment technique requirement for which the exemption was granted within 12 months from the granting of the exemption.

(d) The final date for compliance with any schedule issued pursuant to this section may be extended by the department for a period not to exceed three years from the date of the granting of the exemption if the department finds all of the following:

(1) The system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to Section 1412(b)(1) of the federal Safe Drinking Water Act (42 U.S.C. 300g-(b)(1)).

(2) In the case of a system that needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain the financial assistance or the system has entered into an enforceable agreement to become part of a regional public water system.

(3) The system is taking all practicable steps to meet the standard.

(e) In the case of a system that does not serve more than a population of 3,300 and that needs financial assistance for the necessary improvements, an exemption granted pursuant to paragraph (2) of subdivision (d) shall not exceed a total of six years.

(f) Prior to the granting of an exemption pursuant to this section, the department shall provide notice and an opportunity for a public hearing. Notice of any public hearing held pursuant to this section shall be given by the department in writing to the public water system seeking the exemption and to the public as provided in Section 6061 of the Government Code. A public hearing provided pursuant to this subdivision is not an adjudicative hearing and is not required to comply with Section 100171.

(g) A public water system may not receive an exemption under this section if the system is granted a variance pursuant to Section 116430.

(h) Unless the department has already granted an exemption pursuant to subdivision (a), the department may exempt a public water system from compliance with a maximum containment level or treatment technique requirement for up to two years if the department finds, and continues to find, that a plan submitted by the water system may

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reasonably be expected to bring the water system into compliance by any of the following means:

- (1) The physical consolidation of the system with one or more other systems.
- (2) The consolidation of significant management and administrative functions of the system with one or more other systems.
- (3) The transfer of ownership of the system.

### **Section 116430. Variances**

(a) The department may grant a variance or variances from primary drinking water standards to a public water system. Any variance granted pursuant to this subdivision shall conform to the requirements established under the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-4).

(b) (1) In addition to the authority provided in subdivision (a), at the request of any public water system, the department shall grant a variance from the primary drinking water standard adopted by the department for fluoride. A variance granted by the department pursuant to this subdivision shall prohibit fluoride levels in excess of 75 percent of the maximum contaminant level established in the national primary drinking water regulation adopted by the United States Environmental Protection Agency for fluoride, or three milligrams per liter, whichever is higher, and shall be valid for a period of up to 30 years. The department shall review each variance granted pursuant to this section at least every five years. The variance may be withdrawn upon reasonable notice by the department if the department determines that the community served by the public water system no longer accepts the fluoride level authorized in the variance or the level of fluoride authorized by the variance poses an unreasonable risk to health. In no case may a variance be granted in excess of the United States Environmental Protection Agency maximum contaminant level.

(2) The department shall grant a variance pursuant to paragraph (1) only if it determines, after conducting a public hearing in the community served by the public water system, that there is no substantial community opposition to the variance and the variance does not pose an unreasonable risk to health. The public water system shall provide written notification, approved by the department, to all customers which shall contain at least the following information:

(A) The fact that a variance has been requested.

(B) The date, time and location of the public hearing that will be conducted by the department.

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(C) The level of fluoride that will be allowed by the requested variance and how this level compares to the maximum contaminant levels prescribed by the state primary drinking water standard, the federal national primary drinking water regulation, and the federal national secondary drinking water regulation.

(D) A discussion of the types of health and dental problems that may occur when the fluoride concentration exceeds the maximum contaminant levels prescribed by the state standard and the federal regulations.

(3) If, at any time after a variance has been granted pursuant to paragraph (1), substantial community concerns arise concerning the level of fluoride present in the water supplied by the public water system, the public water system shall notify the department, conduct a public hearing on the concerns expressed by the community, determine the fluoride level that is acceptable to the community, and apply to the department for an amendment to the variance which reflects that determination.

## ARTICLE 5. PUBLIC NOTIFICATION

### **Section 116450. Notification to department and to users**

(a) When any primary drinking water standard specified in the department's regulations is not complied with, when a monitoring requirement specified in the department's regulations is not performed, or when a water purveyor fails to comply with the conditions of any variance or exemption, the person operating the public water system shall notify the department and shall give notice to the users of that fact in the manner prescribed by the department. When a variance or an exemption is granted, the person operating the public water system shall give notice to the users of that fact.

(b) When a person operating a public water system determines that a significant rise in the bacterial count of water has occurred in water he or she supplies, the person shall provide, at his or her expense, a report on the rise in bacterial count of the water, together with the results of an analysis of the water, within 24 hours to the department and, where appropriate, to the local health officer.

(c) When the department receives the information described in subdivision (b) and determines that it constitutes an immediate danger to health, the department shall immediately notify the person operating the public water system to implement the emergency notification plan required by this chapter.

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(d) In the case of a failure to comply with any primary drinking water standard that represents an imminent danger to the health of water users, the operator shall notify each of his or her customers as provided in the approved emergency notification plan.

(e) In addition, the same notification requirement shall be required in any instance in which the department or the local health department recommends to the operator that it notify its customers to avoid internal consumption of the water supply and to use bottled water due to a chemical contamination problem that may pose a health risk.

(f) The content of the notices required by this section shall be approved by the department. Notice shall be repeated at intervals, as required by the department, until the department concludes that there is compliance with its standards or requirements. Notices may be given by the department.

In any case where public notification is required by this section because a contaminant is present in drinking water at a level in excess of a primary drinking water standard, the notification shall include identification of the contaminant, information on possible effects of the contaminant on human health, and information on specific measures that should be taken by persons or populations who might be more acutely affected than the general population.

(g) Whenever a school or school system, the owner or operator of residential rental property, or the owner or operator of a business property receives a notification from a person operating a public water system under any provision of this section, the school or school system shall notify school employees, students and parents if the students are minors, the owner or operator of a residential rental property shall notify tenants, and the owner or operator of business property shall notify employees of businesses located on the property.

(1) The operator shall provide the customer with a sample notification form that may be used by the customer in complying with this subdivision and that shall indicate the nature of the problem with the water supply and the most appropriate methods for notification that may include, but is not limited to, the sending of a letter to each water user and the posting of a notice at each site where drinking water is dispensed.

(2) The notice required by this subdivision shall be given within 10 days of receipt of notification from the person operating the public water system.

(3) Any person failing to give notice as required by this subdivision shall be civilly liable in an amount not to exceed one thousand dollars (\$1,000) for each day of failure to give notice.

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(4) If the operator has evidence of noncompliance with this subdivision the operator shall report this information to the local health department and the department.

**Section 116455. Notification to local agency - well contamination**

(a) When a well, that is used as a source of drinking water for a public water system, is discovered to include, or is closed due to the presence of, a contaminant in excess of a maximum contaminant level or an action level established by the department, the person operating the public water system shall notify the governing body of the local agency in which users of the drinking water reside within 30 days of the discovery or closure.

(b) The notification required by subdivision (a) shall include the location of any affected well, its name, its type, the origin, if known, of the contaminant, the maximum contaminant level or action level for the contaminant detected and the operational status of the well immediately prior to its closure.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Action level" means the concentration level of a contaminant in potable water that the department has determined, based on available scientific information, provides an adequate margin of safety to prevent potential risks to human health.

(2) "Local agency" means a city or county, or a city and county.

**Section 116460. Emergency notification plan requirement**

No person shall operate a public water system without an emergency notification plan that has been submitted to and approved by the department. The emergency notification plan shall provide for immediate notice to the customers of the public water system of any significant rise in the bacterial count of water or other failure to comply with any primary drinking water standard that represents an imminent danger to the health of the water users.

No permit, variance, or exemption may be issued or amended under this chapter until an emergency notification plan has been approved by the department.

The department shall adopt regulations to implement the provisions of this section. The regulations may provide for the exclusion of public water systems from the requirements of this section when, in the judgment of the department, the exclusion will best serve the public interest.

**Section 116465. PUC orders for additional facilities**

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Upon formal complaint by the director alleging that additional facilities are necessary to provide the users of a public water system operated by a public utility under the jurisdiction of the Public Utilities Commission with a continuous and adequate supply of water or to bring the water system into conformity with secondary drinking water standards, the commission may, after hearing, direct the public utility to make the changes in its procedures or additions to its facilities as the commission shall determine are necessary to provide a continuous and adequate supply of water to the users thereof or to bring the system into conformity with secondary drinking water standards. Any proceeding of the commission pursuant to this article shall be conducted as provided in Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code, and any order issued by the commission pursuant to this action shall be subject to judicial review as provided in Chapter 9.

**Section 116470. Consumer confidence report**

(a) As a condition of its operating permit, every public water system shall annually prepare a consumer confidence report and mail or deliver a copy of that report to each customer, other than an occupant, as defined in Section 799.28 of the Civil Code, of a recreational vehicle park. A public water system in a recreational vehicle park with occupants as defined in Section 799.28 of the Civil Code shall prominently display on a bulletin board at the entrance to or in the office of the park, and make available upon request, a copy of the report. The report shall include all of the following information:

(1) The source of the water purveyed by the public water system.

(2) A brief and plainly worded definition of the terms "maximum contaminant level," "primary drinking water standard," and "public health goal."

(3) If any regulated contaminant is detected in public drinking water supplied by the system during the past year, the report shall include all of the following information:

(A) The level of the contaminant found in the drinking water, and the corresponding public health goal and primary drinking water standard for that contaminant.

(B) Any violations of the primary drinking water standard that have occurred as a result of the presence of the contaminant in the drinking water and a brief and plainly worded statement of health concerns that resulted in the regulation of that contaminant.

(C) The public water system's address and phone number to enable customers to obtain further information concerning contaminants and potential health effects.

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(4) Information on the levels of unregulated contaminants, if any, for which monitoring is required pursuant to state or federal law or regulation.

(5) Disclosure of any variances or exemptions from primary drinking water standards granted to the system and the basis therefor.

(b) On or before July 1, 1998, and every three years thereafter, public water systems serving more than 10,000 service connections that detect one or more contaminants in drinking water that exceed the applicable public health goal, shall prepare a brief written report in plain language that does all of the following:

(1) Identifies each contaminant detected in drinking water that exceeds the applicable public health goal.

(2) Discloses the numerical public health risk, determined by the office, associated with the maximum contaminant level for each contaminant identified in paragraph (1) and the numerical public health risk determined by the office associated with the public health goal for that contaminant.

(3) Identifies the category of risk to public health, including, but not limited to, carcinogenic, mutagenic, teratogenic, and acute toxicity, associated with exposure to the contaminant in drinking water, and includes a brief plainly worded description of these terms.

(4) Describes the best available technology, if any is then available on a commercial basis, to remove the contaminant or reduce the concentration of the contaminant. The public water system may, solely at its own discretion, briefly describe actions that have been taken on its own, or by other entities, to prevent the introduction of the contaminant into drinking water supplies.

(5) Estimates the aggregate cost and the cost per customer of utilizing the technology described in paragraph (4), if any, to reduce the concentration of that contaminant in drinking water to a level at or below the public health goal.

(6) Briefly describes what action, if any, the local water purveyor intends to take to reduce the concentration of the contaminant in public drinking water supplies and the basis for that decision.

(c) Public water systems required to prepare a report pursuant to subdivision (b) shall hold a public hearing for the purpose of accepting and responding to public comment on the report. Public water systems may hold the public hearing as part of any regularly scheduled meeting.

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(d) The department shall not require a public water system to take any action to reduce or eliminate any exceedance of a public health goal.

(e) Enforcement of this section does not require the department to amend a public water system's operating permit.

(f) Pending adoption of a public health goal by the Office of Environmental Health Hazard Assessment pursuant to subdivision (c) of Section 116365, and in lieu thereof, public water systems shall use the national maximum contaminant level goal adopted by the United States Environmental Protection Agency for the corresponding contaminant for purposes of complying with the notice and hearing requirements of this section.

(g) This section is intended to provide an alternative form for the federally required consumer confidence report as authorized by 42 U.S.C. Section 300g-3(c).

#### **Section 116475. Emergency Grant Fund<sup>4</sup>**

(a) The Emergency Clean Water Grant Fund is hereby established in the General Fund and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the department, without regard to fiscal years, to provide financial assistance to public water systems and to fund emergency actions by the department to ensure that safe drinking water supplies are available to all Californians who are served by public water systems.

(b) The department may expend funds in the Emergency Clean Water Grant Fund for the purposes specified in subdivision (a), including, but not limited to, payment for all of the following actions:

(1) The provision of alternative water supplies and bottled water.

(2) Improvements of the existing water supply system.

(3) Hookups with adjacent water systems.

(4) Design, purchase, installation, and operation and maintenance of water treatment technologies.

(c) The department shall develop and revise guidelines for the allocation and administration of moneys in the Emergency Clean Water Grant Fund. These guidelines shall include, but are not limited to, all of the following:

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<sup>4</sup> The initial funding has been exhausted. The Legislature has not appropriated any additional monies to the Emergency Grant Fund.

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(1) A definition of what constitutes an emergency requiring an alternative or improved water supply.

(2) Priorities and procedures for allocating funds.

(3) Repayment provisions, as appropriate.

(4) Procedures for recovering funds from parties responsible for the contamination of public water supplies.

The guidelines are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Section 116480. Emergency grant limitations**

(a) The department shall expend moneys available in the Emergency Clean Water Grant Fund only for the purpose of taking corrective action necessary to remedy or prevent an emergency or imminent threat to public health due to the contamination or potential contamination of the public water supply.

(b) Notwithstanding any other provision of law, the department may enter into written contracts for remedial action taken or to be taken pursuant to subdivision (a), and may enter into oral contracts, not to exceed five thousand dollars (\$5,000) in obligation, when, in the judgment of the department, immediate remedial action is necessary to remedy or prevent an emergency specified in subdivision (a). The contracts, written or oral, may include provisions for the rental or purchase of tools and equipment, either with or without operators, for the furnishing of labor and materials and for engineering consulting necessary to accomplish the work.

**Section 116485. Exemption for emergency grants**

Any remedial action taken or contracted for by the department pursuant to Section 116480 shall be exempt from the following provisions:

(a) State Contract Act provided for pursuant to Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code.

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 14780 of the Government Code and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

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(d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

## **ARTICLE 6. ENFORCEMENT RESPONSIBILITY**

### **Section 116500. Contract county authority**

This chapter shall be enforced directly by the department for all public water systems, including state small water systems, in any county that does not have a local health officer, or contracts with the department for environmental health services pursuant to Section 1157 and elects not to enforce this chapter.

## **ARTICLE 7. REQUIREMENTS AND COMPLIANCE**

### **Section 116525. Permits**

(a) No person shall operate a public water system unless he or she first submits an application to the department and receives a permit as provided in this chapter. A change in ownership of a public water system shall require the submission of a new application.

(b) The department may require a new application whenever a change in regulatory jurisdiction has occurred.

(c) The department may renew, reissue, revise, or amend any domestic water supply permit whenever the department deems it to be necessary for the protection of public health whether or not an application has been filed.

### **Section 116530. Technical report**

A public water system shall submit a technical report to the department as part of the permit application or when otherwise required by the department. This report may include, but not be limited to, detailed plans and specifications, water quality information, and physical descriptions of the existing or proposed system, and financial assurance information.

### **Section 116535. Permit application review**

Upon determination that an application submitted pursuant to this chapter is complete, the department shall make a thorough investigation of the proposed or existing plant,

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works, system, or water supply, and all other circumstances and conditions that it deems material, including any required financial assurance information.

**Section 116540. Issue or deny; conditional permits**

Following completion of the investigation and satisfaction of the requirements of subdivisions (a) and (b), the department shall issue or deny the permit. The department may impose permit conditions, requirements for system improvements, and time schedules as it deems necessary to assure a reliable and adequate supply of water at all times that is pure, wholesome, potable, and does not endanger the health of consumers.

(a) No public water system that was not in existence on January 1, 1998, shall be granted a permit unless the system demonstrates to the department that the water supplier possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesome, and potable drinking water. This section shall also apply to any change of ownership of a public water system that occurs after January 1, 1998.

(b) No permit under this chapter shall be issued to an association organized under Title 3 (commencing with Section 20000) of Division 3 of the Corporations Code. This section shall not apply to unincorporated associations that as of December 31, 1990, are holders of a permit issued under this chapter.

**Section 116545. Hearing permissible**

Prior to the issuance of any new, revised, renewed, or amended permit, or the denial of a permit, the department may conduct a public hearing to obtain additional public comment. Notice of the hearing shall be provided to the applicant and interested persons at least 30 days prior to the hearing. The department may require the applicant to distribute the notice of the hearing to affected consumers.

**Section 116550. Changes requiring amended permit**

(a) No person operating a public water system shall modify, add to or change his or her source of supply or method of treatment of, or change his or her distribution system as authorized by a valid existing permit issued to him or her by the department unless the person first submits an application to the department and receives an amended permit as provided in this chapter authorizing the modification, addition, or change in his or her source of supply or method of treatment.

(b) Unless otherwise directed by the department, changes in distribution systems may be made without the submission of a permit application if the changes comply in all particulars with the waterworks standards.

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### **Section 116551. Augmentation of Source with Recycled Water**

The department shall not issue a permit to a public water system or amend a valid existing permit for the use of a reservoir as a source of supply that is directly augmented with recycled water, as defined in subdivision (n) of Section 13050 of the Water Code, unless the department does all of the following:

- (a) Performs an engineering evaluation that evaluates the proposed treatment technology and finds that the proposed technology will ensure that the recycled water meets or exceeds all applicable primary and secondary drinking water standards and poses no significant threat to public health.
- (b) Holds at least three duly noticed public hearings in the area where the recycled water is proposed to be used or supplied for human consumption to receive public testimony on that proposed use. The department shall make available to the public, not less than 10 days prior to the date of the first hearing held pursuant to this subdivision, the evaluations and findings made pursuant to subdivision (a).

### **Section 116555. Operational requirements**

- (a) Any person who owns a public water system shall ~~do~~ ensure that the system does all of the following:
  - (1) Complies with primary and secondary drinking water standards.
  - (2) Will not be subject to backflow under normal operating conditions.
  - (3) Provides a reliable and adequate supply of pure, wholesome, healthful, and potable water.
  - (4) Employs or utilizes only water treatment plant operators or water treatment operators-in-training that have been certified by the department at the appropriate grade.
  - (5) Complies with the operator certification program established pursuant to Chapter 4 (commencing with Section 106875).
- (b) Any person who owns a community water system or a nontransient noncommunity water system shall do all of the following:
  - (1) Employ or utilize only water distribution system operators who have been certified by the department at the appropriate grade for positions in responsible charge of the distribution system.

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(2) Place the direct supervision of the water system, including water treatment plants, water distribution systems, or both under the responsible charge of an operator or operators holding a valid certification equal to or greater than the classification of the treatment plant and the distribution system.

**Section 116556. Redwood Valley County Water District Exception**

Notwithstanding subdivision (c) of Section 116555 and its implementing regulations, including Sections 64562 and 64568 of the California Code of Regulations, the Redwood Valley County Water District, in order to relieve hardship, may make not more than 135 new 3/4-inch equivalent domestic service connections to its water system if all of the following conditions are met:

(a) The district has a contract, agreement, or independent water right to divert water from Lake Mendocino or another adequate source of water supply.

(b) Redwood Valley is an allowed place of use under that contract, agreement, or water right.

(c) The department has determined that the water source provides an adequate physical supply of water under its duly adopted waterworks standards.

(d) The connection will relieve hardship, as determined by the district based on objective proof that the structure served by the connection was constructed prior to December 31, 1997, and absent a connection, only has access to a water supply that furnishes an inadequate quality or quantity of water as measured by drinking water standards adopted by the district.

(e) The connections authorized by this section are in addition to connections otherwise allowed by law, including connections authorized by Section 116555.

**Section 116565. Operating fee**

(a) Each public water system serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption, shall reimburse the department for actual cost incurred by the department for conducting those activities mandated by this chapter relating to the issuance of domestic water supply permits, inspections, monitoring, surveillance, and water quality evaluation that relate to that specific public water system. The amount of reimbursement shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities.

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(b) Each public water system serving less than 1,000 service connections shall pay an annual drinking water operating fee to the department as set forth in this subdivision for costs incurred by the department for conducting those activities mandated by this chapter relating to inspections, monitoring, surveillance, and water quality evaluation relating to public water systems. The total amount of fees shall be sufficient to pay, but in no event shall exceed, the department's actual cost in conducting these activities. Notwithstanding adjustment of actual fees collected pursuant to Section 100425 as authorized pursuant to subdivision (d) of Section 106590, the maximum amount that shall be paid annually by a public water system pursuant to this section shall not exceed the following:

<u>Type of public water system</u>	<u>Fee</u>
15- 24 service connections . . . . .	\$250
25- 99 service connections . . . . .	\$400
100-499 service connections . . . . .	\$500
500-999 service connections . . . . .	\$700
Noncommunity water systems pursuant to paragraph (1) of subdivision (j) of Section 116275. . . . .	\$350
Noncommunity water systems exempted pursuant to Section 116282. . . . .	\$100

(c) For purposes of determining the fees provided for in subdivision (a), the department shall maintain a record of its actual costs for pursuing the activities specified in subdivision (a) relative to each system required to pay the fees. The fee charged each system shall reflect the department's actual cost, or in the case of a local primacy agency the local primacy agency's actual cost, of conducting the specified activities.

(d) The department shall submit an invoice for cost reimbursement for the activities specified in subdivision (a) to the public water systems no more than twice a year.

(1) The department shall submit one estimated cost invoice to public water systems serving 1,000 or more service connections and any public water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. This invoice shall include the actual hours expended during the first six months of the fiscal year. The hourly cost rate used to determine the amount of the estimated cost invoice shall be the rate for the previous fiscal year.

(2) The department shall submit a final invoice to the public water system prior to October 1 following the fiscal year that the costs were incurred. The invoice shall indicate the total hours expended during the fiscal year, the reasons for the expenditure, the hourly cost rate of the department for the fiscal year, the estimated cost invoice, and payments received. The amount of the final invoice shall be determined using the total hours expended during the fiscal year and the actual hourly cost rate of the department

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for the fiscal year. The payment of the estimated invoice, exclusive of late penalty, if any, shall be credited toward the final invoice amount.

(3) Payment of the invoice issued pursuant to paragraphs (1) and (2) shall be made within 90 days of the date of the invoice. Failure to pay the amount of the invoice within 90 days shall result in a 10-percent late penalty that shall be paid in addition to the invoiced amount.

(e) Any public water system under the jurisdiction of a local primacy agency shall pay the fees specified in this section to the local primacy agency in lieu of the department. This section shall not preclude a local health officer from imposing additional fees pursuant to Section 101325.

#### **Section 116570. Permit application fee**

(a) Each public water system serving less than 1,000 service connections applying for a domestic water supply permit pursuant to Section 116525 or 116550 shall pay a permit application processing fee to the department. Payment of the fee shall accompany the application for the permit or permit amendment.

(b) The amount of the permit application fee required under subdivision (a) shall be as follows:

(1) A new community water system for which no domestic water supply permits have been previously issued by the department shall pay an application fee of five hundred dollars (\$500).

(2) A new noncommunity water system for which no domestic water supply permits have been previously issued by the department shall pay an application fee of three hundred dollars (\$300).

(3) An existing public water system applying for an amendment to a domestic water supply permit due to a change in ownership shall pay an application fee of one hundred fifty dollars (\$150).

(4) An existing public water system applying for an amendment to a domestic water supply permit due to an addition or modification of the source of supply, or an addition or change in the method of treatment of the water supply shall pay an application fee of two hundred fifty dollars (\$250).

(c) Any public water system under the jurisdiction of a local primacy agency shall pay the permit application fees specified in this section to the local primacy agency in lieu of the department.

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**Section 116577. Enforcement fee**

(a) Each public water system shall reimburse the department for actual costs incurred by the department for any of the following enforcement activities related to that water system:

- (1) Preparing, issuing, and monitoring compliance with, an order or a citation.
- (2) Preparing and issuing public notification.
- (3) Conducting a hearing pursuant to Section 116625.

(b) The department shall submit an invoice for these enforcement costs to the public water system that requires payment prior to September 1 of the fiscal year following the fiscal year in which the costs were incurred. The invoice shall indicate the total hours expended, the reasons for the expenditure, and the hourly cost rate of the department. The costs set forth in the invoice shall not exceed the total actual costs to the department of enforcement activities specified in this section.

(c) Notwithstanding the reimbursement of enforcement costs of the local primacy agency pursuant to subdivision (a) of Section 116595 by public water systems under the jurisdiction of the local primacy agency, public water systems shall also reimburse enforcement costs, if any, incurred by the department pursuant to this section.

(d) "Enforcement costs" as used in this section does not include "litigation costs" pursuant to Section 116585.

(e) The department shall not be entitled to enforcement costs pursuant to this section if either a court or the department determines that enforcement activities were in error.

(f) The maximum reimbursement, pursuant to this section, by a public water system serving less than 1,000 service connections during any fiscal year shall not exceed one thousand dollars (\$1,000) or twice the maximum for that public water system as set forth in subdivision (c) of Section 116565, whichever is greater.

**Section 116580. Exemption, plan review, variance and waiver fees**

(a) Each public water system that requests an exemption, plan review, variance, or waiver of any applicable requirement of this chapter or any regulation adopted pursuant to this chapter, shall reimburse the department for actual costs incurred by the department in processing the request.

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(b) The department shall submit an invoice to the water system prior to October 1 of the fiscal year following the fiscal year in which the department's decision was rendered with respect to the request for a plan review, exemption, variance, or waiver. The invoice shall indicate the number of hours expended by the department and the department's hourly cost rate. Payment of the fee shall be made within 120 days of the date of the invoice. The department may revoke any approval of a request for an exemption, variance, or waiver for failure to pay the required fees.

(c) Notwithstanding subdivisions (a) and (b), requests for, and reimbursement of actual costs for, an exemption, variance, or waiver for public water systems under the jurisdiction of the local primacy agency shall, instead, be submitted to the local primacy agency pursuant to subdivision (c) of Section 116595.

#### **Section 116585. Litigation fee**

In any civil court action brought to enforce this chapter, the prevailing party or parties shall be awarded litigation costs, including, but not limited to, salaries, benefits, travel expenses, operating equipment, administrative, overhead, other litigation costs, and attorney's fees, as determined by the court. Litigation costs awarded to the department by the court shall be deposited into the Safe Drinking Water Account. Litigation costs awarded to a local primacy agency by the court shall be used by that local primacy agency to offset the local primacy agency's litigation costs.

#### **Section 116590. Safe Drinking Water Account, fees and caps**

(a) All funds received by the department pursuant to this chapter, including, but not limited to, all civil penalties collected by the department pursuant to Article 9 (commencing with Section 116650) and Article 11 (commencing with Section 116725), shall be deposited into the Safe Drinking Water Account that is hereby established. Funds in the Safe Drinking Water Account may not be expended for any purpose other than as set forth in this chapter. All moneys collected by the department pursuant to Sections 116565 to 116600, inclusive, shall be deposited into the Safe Drinking Water Account for use by the department, upon appropriation by the Legislature, for the purpose of providing funds necessary to administer this chapter.

(b) The department's hourly cost rate used to determine the reimbursement for actual costs pursuant to Sections 116565, 116577, and 116580 shall be based upon the department's salaries, benefits, travel expense, operating, equipment, administrative support, and overhead costs.

(c) Notwithstanding Section 6103 of the Government Code, each public water system operating under a permit issued pursuant to this chapter shall pay the fees set forth in this

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chapter. A public water system shall be permitted to collect a fee from its customers to recover the fees paid pursuant to this chapter.

(d) The fees collected pursuant to subdivision (b) of Section 116565 and subdivision (b) of Section 116570 shall be adjusted annually pursuant to Section 100425, and the adjusted fee amounts shall be rounded off to the nearest whole dollar.

(e) Fees assessed pursuant to this chapter shall not exceed actual costs to either the department or the local primacy agency, as the case may be, related to the public water systems assessed the fees.

(f) In no event shall the total amount of funds collected pursuant to subdivision (a) of Section 116565, and subdivision (a) of Section 116577 from public water systems serving 1,000 or more service connections exceed the following:

(1) For the 2001-02 fiscal year, seven million dollars (\$7,000,000).

(2) For the 2002-03 fiscal year and subsequent fiscal years, the total amount of funds shall not increase by more than 5 percent of the amount collected for the previous fiscal year.

(g) The department shall develop a time accounting standard designed to do all of the following:

(1) Provide accurate time accounting.

(2) Provide accurate invoicing based upon hourly rates comparable to private sector professional classifications and comparable rates charged by other states for comparable services. These rates shall be applied against the time spent by the actual individuals who perform the work.

(3) Establish work standards that address work tasks, timing, completeness, limits on redirection of effort, and limits on the time spent in the aggregate for each activity.

(4) Establish overhead charge-back limitations, including, but not limited to, charge-back limitations on charges relating to reimbursement of services provided to the department by other departments and agencies of the state, that reasonably relate to the performance of the function.

(5) Provide appropriate invoice controls.

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**Section 116595. LPA fees**

(a) Any public water system under the jurisdiction of a local primacy agency shall reimburse the local primacy agency for any enforcement cost incurred by the local primacy agency related to any of the following relating to that water system:

- (1) Preparing, issuing, and monitoring compliance with, an order or a citation.
- (2) Preparing and issuing public notification.
- (3) Conducting a hearing pursuant to Section 116625.

The local primacy agency shall submit an invoice to the public water system that requires payment, prior to September 1 of the fiscal year following the fiscal year in which the costs were incurred. The invoice shall indicate the total hours expended, the reasons for the expenditure, and the hourly cost rate of the local primacy agency. The invoice shall not exceed the total costs to the local primacy agency of enforcement activities specified in this subdivision. Notwithstanding the reimbursement to the department of enforcement costs, if any, pursuant to Section 116577, any public water system under the jurisdiction of the local primacy agency shall also reimburse the local primacy agency for enforcement costs incurred by the local primacy agency pursuant to this section. The local primacy agency shall not be entitled to enforcement costs pursuant to this subdivision if either a court or the local primacy agency determines that enforcement activities were in error. "Enforcement costs" as used in this subdivision does not include "litigation costs" as used in subdivision (d). The maximum reimbursement, pursuant to this subdivision, by a public water system serving less than 1,000 service connections during any fiscal year shall not exceed twice the maximum for that public water system as set forth in subdivision (c) of Section 116565.

(b) The local primacy agency may adopt a fee schedule for the processing of applications for a domestic water supply permit, submitted pursuant to subdivision (c) of Section 116570 by a public water system under the jurisdiction of the local primacy agency, in lieu of the fee schedule set forth in subdivision (b) of Section 116570, to recover its cost of processing the permit applications as specified in the primacy agreement. The fee shall not exceed the total costs to the local primacy agency of processing the permit application.

(c) Any public water system under the jurisdiction of a local primacy agency that requests an exemption, variance, or waiver of any applicable requirement of this chapter, or any regulation of the department adopted pursuant to this chapter, shall submit the request to the local primacy agency and shall reimburse the local primacy agency for any costs incurred by the local primacy agency in processing the request.

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## ARTICLE 7.5. MTBE DETECTION

### Section 116610. Department due dates

- (a) This article shall be known, and may be cited, as the Local Drinking Water Protection Act.
- (b) For purposes of this article, "MTBE" means methyl tertiary-butyl ether.
- (c) Commencing January 1, 1998, the State Department of Health Services shall commence the process for adopting a primary drinking water standard for MTBE that complies with the criteria established under Section 116365. The State Department of Health Services shall establish a primary drinking water standard for MTBE on or before July 1, 1999. The State Department of Health Services may, at its discretion, set primary drinking water standards for other oxygenates.
- (d) On or before July 1, 1998, the State Department of Health Services shall adopt a secondary drinking water standard that complies with the criteria established under subdivision (d) of Section 116275 and that does not exceed a consumer acceptance level for MTBE.

## ARTICLE 8. VIOLATIONS

### Section 116625. Revocation and suspension of permits

- (a) The department, after a hearing noticed and conducted as provided in Section 100171, may suspend or revoke any permit issued pursuant to this chapter if the department determines pursuant to the hearing that the permittee is not complying with the permit, this chapter, or any regulation, standard, or order issued or adopted thereunder, or that the permittee has made a false statement or representation on any application, record, or report maintained or submitted for purposes of compliance with this chapter. If the permit at issue has been temporarily suspended pursuant to subdivision (c), the accusation shall be served and notice of the hearing date given within 15 days of the effective date of the temporary suspension order. The commencement of the hearing shall be as soon as practicable, but in no case later than 60 days after the effective date of the temporary suspension order.
- (b) The permittee may file with the superior court a petition for a writ of mandate for review of any decision of the department made pursuant to subdivision (a). Failure to file a petition shall not preclude a party from challenging the reasonableness or validity of a

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decision of the department in any judicial proceeding to enforce the decision or from pursuing any remedy authorized by this chapter.

(c) The department may temporarily suspend any permit issued pursuant to this chapter prior to any hearing when the action is necessary to prevent an imminent or substantial danger to health. The director shall notify the permittee of the temporary suspension and the effective date thereof and, at the same time, notify the permittee that a hearing has been scheduled. The hearing shall be held as soon as possible, but not later than 15 days after the effective date of the temporary suspension and shall deal only with the issue of whether the temporary suspension shall remain in place pending a hearing on the merits. The temporary suspension shall remain in effect until the hearing is completed and the director has made a final determination on the temporary suspension, that in any event shall be made within 15 days after the completion of the hearing. If the determination is not transmitted within 15 days after the hearing is completed, the temporary suspension shall be of no further effect. Dissolution of the temporary suspension does not deprive the department of jurisdiction to proceed with a hearing on the merits under subdivision (a).

## **ARTICLE 9. REMEDIES**

### **Section 116650. Citations**

(a) If the department determines that a public water system is in violation of this chapter or any regulation, permit, standard, or order issued or adopted thereunder, the department may issue a citation to the public water system. The citation shall be served upon the public water system personally or by registered mail.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, order, or regulation alleged to have been violated.

(c) For continuing violations, the citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation where appropriate. If the public water system fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as specified in subdivision (e).

(d) For a noncontinuing violation of primary drinking standards, other than turbidity, the department may assess in the citation a civil penalty as specified in subdivision (e).

(e) Citations issued pursuant to this section shall be classified according to the nature of the violation or the failure to comply. The department shall specify the classification in the citation and may assess civil penalties for each classification as follows:

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(1) For violation of a primary drinking standard, other than turbidity, an amount not to exceed one thousand dollars (\$1,000) for each day that the violation occurred for noncontinuing violations or for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation or order issued for failure of the primary drinking water standard for turbidity or for violation of a secondary drinking water standard that the director determines may have a direct or immediate relationship to the welfare of the users, an amount not to exceed one thousand dollars (\$1,000) for each day that the violation continues beyond the date specified for correction in the citation.

(3) For failure to comply with any citation or order issued for noncompliance with any department regulation or order, other than a primary or secondary drinking water standard, an amount not to exceed two hundred dollars (\$200) per day for each day the violation continues beyond the date specified for correction in the citation.

#### **Section 116655. Orders**

(a) Whenever the department determines that any person has violated or is violating this chapter, or any permit, regulation, or standard issued or adopted pursuant to this chapter, the director may issue an order doing any of the following:

- (1) Directing compliance forthwith.
- (2) Directing compliance in accordance with a time schedule set by the department.
- (3) Directing that appropriate preventive action be taken in the case of a threatened violation.

(b) An order issued pursuant to this section may include, but shall not be limited to, any or all of the following requirements:

- (1) That the existing plant, works, or system be repaired, altered, or added to.
- (2) That purification or treatment works be installed.
- (3) That the source of the water supply be changed.
- (4) That no additional service connection be made to the system.
- (5) That the water supply, the plant, or the system be monitored.

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(6) That a report on the condition and operation of the plant, works, system, or water supply be submitted to the department.

### **Section 116660. Injunctions**

(a) Any person who operates a public water system without having an unrevoked permit to do so, may be enjoined from so doing by any court of competent jurisdiction at the suit of the department.

(b) When the department determines that any person has engaged in or is engaged in any act or practice that constitutes a violation of this chapter, or any regulation, permit, standard, or order issued or adopted thereunder, the department may bring an action in the superior court for an order enjoining the practices or for an order directing compliance.

(c) Upon a showing by the department of any violation set forth in subsection (b); the superior court shall enjoin the practices and may do any of the following:

(1) Enforce a reasonable plan of compliance, including the appointment of a competent person, to be approved by the department, and paid by the operator of the public water system, who shall take charge of and operate the system so as to secure compliance.

(2) Enjoin further service connections to the public water system.

(3) Afford any further relief that may be required to insure compliance with this chapter.

### **Section 116665. Receivership**

Whenever the department determines that any public water system is unable or unwilling to adequately serve its users, has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the department, the department may petition the superior court for the county within which the system has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon such terms and conditions as the court shall prescribe. The court may require, as a condition to the appointment of the receiver, that a sufficient bond be given by the receiver and be conditioned upon compliance with the orders of the court and the department, and the protection of all property rights involved. The court may provide, as a condition of its order, that the receiver appointed pursuant to the order shall not be held personally liable for any good faith, reasonable effort to assume possession of, and to operate, the system in compliance with the order.

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**Section 116670. Nuisance and summary abatement**

Anything done, maintained, or suffered as a result of failure to comply with any primary drinking water standard is a public nuisance dangerous to health, and may be enjoined or summarily abated in the manner provided by law. Every public officer or body lawfully empowered to do so shall abate the nuisance immediately.

**Section 116675. Authorized action against public water systems**

Notwithstanding Sections 116340 and 116500, the department shall, after adequate notification of the local health officer, take action authorized by this chapter against a public water system under the jurisdiction of the local health officer if any of the following occur:

- (a) The public water system has been in violation of any provision of this chapter or the regulations adopted hereunder, including any violation of compliance with drinking water standards or waterworks standards, for a period of at least 90 days within the previous year.
- (b) A contaminant is present in, or likely to enter, a public water system and presents an imminent and substantial danger to the health of the users of the system.

**ARTICLE 10. JUDICIAL REVIEW**

**Section 116700. Writ of mandate**

- (a) Within 30 days after service of a copy of an order issued by the department, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof. Failure to file an action shall not preclude a party from challenging the reasonableness and validity of a decision or order of the department in any judicial proceedings brought to enforce the decision or order or for any civil or criminal remedy authorized by this chapter.
- (b) The evidence before the court shall consist of all relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the provisions of this chapter. In every case, the court shall exercise its independent judgment on the evidence.
- (c) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

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## ARTICLE 11. CRIMES AND PENALTIES

### Section 116725. Civil penalties

(a) Any person who knowingly makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for purposes of compliance with this chapter, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Any person who violates a citation schedule of compliance for a primary drinking water standard, other than turbidity, or any order regarding a primary drinking water standard other than turbidity, or the requirement that a reliable and adequate supply of pure, wholesome, healthful, and potable water be provided may be liable, as determined by the court, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation or, for continuing violations, for each day that violation continues.

(c) Any person who violates any order, other than one specified in subdivision (b), issued pursuant to this chapter may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(d) Any person who operates a public water system without a permit issued by the department pursuant to this chapter may be liable, as determined by the court, for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation or, for continuing violations, for each day that violation continues.

(e) Each civil penalty imposed for any separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

### Section 116730. Misdemeanors and felonies

(a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail not to exceed one year, or by both the fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this chapter.

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(2) Has in his or her possession any record required to be maintained pursuant to this chapter that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this chapter.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department's responsibilities pursuant to this chapter in response to an imminent and substantial danger.

(5) Violates an order issued by the department pursuant to this chapter that has a substantial probability of presenting an imminent danger to the health of persons.

(6) Operates a public water system without a permit issued by the department pursuant to this chapter.

(b) If the conviction under subdivision (a) is for a violation committed after a first conviction of the person under this section, the person may be punished by imprisonment in the state prison for up to 24 months, or in the county jail for not to exceed one year, or by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by both the fine and imprisonment.

#### **Section 116735. Inspection authority**

(a) In order to carry out the purposes of this chapter, any duly authorized representative of the department may, at any reasonable hour of the day, do any of the following:

(1) Enter and inspect any public water system or any place where the public water system records are stored, kept, or maintained.

(2) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(3) Set up and maintain monitoring equipment for purposes of assessing compliance with this chapter.

(4) Obtain samples of the water supply.

(5) Photograph any portion of the system, any activity, or any sample taken.

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(b) The department shall inspect each public water system at least annually, and shall provide an opportunity for a representative of the public water system to accompany the representative of the department during the inspection of the water system.

(c) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way any duly authorized representative of the department from undertaking the activities authorized by subdivision (a).

#### **Section 116740. Civil penalty collection**

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Attorney General or the district attorney shall recover the amount for which the person is liable in the superior court. In this action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

#### **Section 116745. Remedies are cumulative**

The remedies provided by this chapter are cumulative and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts.

#### **Section 116750. Tampering with public water systems**

(a) Any person who tampers with a public water system is guilty of a felony and shall be punished by imprisonment in the state prison for three, four, or five years, subject to a fine not to exceed thirty thousand dollars (\$30,000), or both.

(b) Any person who tampers with or makes a threat to tamper with a public water system is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, two, or three years, subject to a fine not to exceed twenty thousand dollars (\$20,000), or both.

(c) For purposes of this section, the term "tamper" means either of the following:

(1) To introduce a contaminant into a public water system with the intention of harming persons.

(2) To otherwise interfere with the operation of a public water system with the intention of harming persons.

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**Section 116751. DHS determination for DFG poisoning**

The Department of Fish and Game may not introduce a poison to a drinking water supply for purposes of fisheries management unless the State Department of Health Services determines that the activity will not have a permanent adverse impact on the quality of the drinking water supply or wells connected to the drinking water supply. In making this determination, the State Department of Health Services shall evaluate the short- and long-term health effects of the poison in drinking water, ensure that an alternative supply of drinking water is provided to the users of the drinking water supply while the activity takes place, and, in cooperation with the Department of Fish and Game, develop and implement a monitoring program to ensure that no detectable residuals of the poison, breakdown products, and other components of the poison formulation remain in the drinking water supply or adjoining wells after the activity is completed.

**CHAPTER 4.5. SAFE DRINKING WATER STATE REVOLVING  
FUND LAW OF 1997**

**ARTICLE 1. TITLE**

**Section 116760. State revolving fund**

This chapter shall be known and may be cited as the Safe Drinking Water State Revolving Fund Law of 1997.

**ARTICLE 2. LEGISLATIVE FINDINGS**

**Section 116760.10. Legislative findings**

The Legislature hereby finds and declares all of the following:

- (a) The department has discovered toxic contaminants and new pathogenic organisms, including cryptosporidium, in many of California's public drinking water systems.
- (b) Many of the contaminants in California's drinking water supplies are known to cause, or are suspected of causing, cancer, birth defects, and other serious illnesses.
- (c) It is unlikely that the contamination problems of small public water systems can be solved without financial assistance from the state.

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(d) The protection of the health, safety, and welfare of the people of California requires that the water supplied for domestic purposes be at all times pure, wholesome, and potable. It is in the interest of the people that the State of California provide technical and financial assistance to ensure a safe, dependable, and potable supply of water for domestic purposes and that water is available in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes.

(e) It is the intent of the Legislature to provide for the upgrading of existing public water supply systems to ensure that all domestic water supplies meet safe drinking water standards and other requirements established under Chapter 4 (commencing with Section 116270).

(f) (1) The extent of the current risk to public health from contamination in drinking water creates a compelling need to upgrade existing public water systems. The demand for financial assistance to enable public water systems to meet drinking water standards and regulations exceeds funds available from the Safe Drinking Water State Revolving Fund.

(2) A project whose primary purpose is to supply or attract growth shall not be eligible to receive assistance from the Safe Drinking Water State Revolving Fund.

(3) A project whose primary purpose is to enable a public water system to improve public health protection by complying with drinking water standards and regulations and that also includes components to accommodate a reasonable amount of growth over its useful life shall be eligible for assistance from the Safe Drinking Water State Revolving Fund, but the project shall receive priority based on the component to meet drinking water standards pursuant to Section 116760.70. The department shall expressly consider the effort of the applicant to secure funds other than those available from the Safe Drinking Water State Revolving Fund in establishing the priority listing for funding pursuant to Article 4 (commencing with Section 116760.50).

(4) After projects have been prioritized for funding into priority list categories pursuant to the requirements of Section 116760.70, within each category, projects that do not include a component of growth, shall receive priority for funding over projects that have a component to accommodate a reasonable amount of growth.

(g) The Legislature further finds and declares that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems.

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- (h) The protection of drinking water sources is essential to ensuring that the people of California are provided with pure, wholesome, and potable drinking water.
- (i) That coordination among local, state, and federal public health and environmental management programs be undertaken to ensure that sources of drinking water are protected while avoiding duplication of effort and reducing program costs.
- (j) It is necessary that a source water protection program be implemented for the purposes of delineating, assessing, and protecting drinking water sources throughout the state and that federal funds be utilized pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.) to carry out that program.
- (k) It is in the interest of the people of the state to provide funds for a perpetual Safe Drinking Water State Revolving Fund that may be combined with similar federal funding to the extent the funding is authorized pursuant to the federal Safe Drinking Water Act (42 U.S.C. Sec. 300j et seq.).
- (l) This chapter shall govern implementation of the Safe Drinking Water State Revolving Fund, and shall be implemented in a manner that is consistent with the federal Safe Drinking Water Act, and, to the extent authorized under the federal act, in a manner that is consistent with the California Safe Drinking Water Act, Chapter 4 (commencing with Section 116275).

### **ARTICLE 3. SAFE DRINKING WATER STATE REVOLVING FUND**

#### **Section 116760.20. Definitions**

Unless the context otherwise requires, the following definitions govern the construction of this chapter:

- (a) "Cost-effective project" means a project that achieves an acceptable result at the most reasonable cost.
- (b) "Department" means the State Department of Health Services.
- (c) "Federal Safe Drinking Water Act" or "federal act" means the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.) and acts amendatory thereof or supplemental thereto.
- (d) "Fund" means the Safe Drinking Water State Revolving Fund created by Section 116760.30.

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- (e) "Funding" means a loan or grant, or both, awarded under this chapter.
- (f) "Matching funds" means state money that equals that percentage of federal contributions required by the federal act to be matched with state funds.
- (g) "Project" means proposed facilities for the construction, improvement, or rehabilitation of a public water system, and may include all items set forth in Section 116761 as necessary to carry out the purposes of this chapter. It also may include refinancing loans, annexation or consolidation of water systems, source water assessments, source water protection, and other activities specified under the federal act.
- (h) "Public agency" means any city, county, city and county, district, or joint powers authority, that owns or operates a public water system.
- (i) "Public water system" or "public water supply system" means a system for the provision to the public of water for human consumption, as defined in Chapter 4 (commencing with Section 116270), as it may be amended from time to time.
- (j) "Reasonable amount of growth" means an increase in growth not to exceed 10 percent of the design capacity needed, based on peak flow, to serve the water demand in existence at the time plans and specifications for the project are approved by the department, over the 20-year useful life of a project. For projects other than the construction of treatment plants including, but not limited to, storage facilities, pipes, pumps, and similar equipment, where the 10-percent allowable growth cannot be adhered to due to the sizes of equipment or materials available, the project shall be limited to the next available larger size.
- (k) "Safe drinking water standards" means those standards established pursuant to Chapter 4 (commencing with Section 116270), as they may now or hereafter be amended.
- (l) "Supplier" means any persons, partnership, corporation, association, public agency, or other entity that owns or operates a public water system.

### **Section 116760.30. Creation of fund in state treasury**

- (a) There is hereby created in the State Treasury the Safe Drinking Water State Revolving Fund for the purpose of implementing this chapter, and, notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated, without regard to fiscal years, to the department to provide, from moneys available for this purpose, grants or revolving fund loans for the design and construction of projects for public water systems that will enable suppliers to meet safe drinking water standards. The department shall be responsible for administering the fund.

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(b) The department shall report at least once every two years to the policy and budget committees of the Legislature on the implementation of this chapter and expenditures from the fund. The report shall describe the numbers and types of projects funded, the reduction in risks to public health from contaminants in drinking water provided through the funding of the projects, and the criteria used by the department to determine funding priorities.

**Section 116760.40. Department authorities**

The department may undertake any of the following actions to implement the Safe Drinking Water State Revolving Fund:

- (a) Enter into agreements with the federal government for federal contributions to the fund.
- (b) Accept federal contributions to the fund.
- (c) Use moneys in the fund for the purposes permitted by the federal act.
- (d) Provide for the deposit of matching funds and any other available and necessary moneys into the fund.
- (e) Make requests on behalf of the state for deposit into the fund of available federal moneys under the federal act.
- (f) Determine on behalf of the state that public water systems that receive financial assistance from the fund will meet the requirements of, and otherwise be treated as required by, the federal act.
- (g) Provide for appropriate audit, accounting, and fiscal management services, plans, and reports relative to the fund.
- (h) Take such additional incidental action as may be appropriate for adequate administration and operation of the fund.
- (i) Enter into an agreement with, and accept matching funds from, a public water system. A public water system that seeks to enter into an agreement with the department and provide matching funds pursuant to this subdivision shall provide to the department evidence of the availability of those funds in the form of a written resolution, or equivalent document, from the public water system before it requests a preliminary loan commitment.
- (j) Charge public water systems that elect to provide matching funds a fee to cover the actual cost of obtaining the federal funds pursuant to Section 1452(e) of the federal act

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(42 U.S.C.A. Sec. 300j-12) and to process the loan application. The fee shall be waived by the department if sufficient funds to cover those costs are available from other sources.

(k) Use money returned to the fund under Section 116761.85 and any other source of matching funds, if not prohibited by statute, as matching funds for the federal administrative allowance under Section 1452(g) of the federal act (42 U.S.C.A. Sec. 300j-12).

(l) Establish separate accounts or subaccounts as required or allowed in the federal act and related guidance, for funds to be used for administration of the fund and other purposes. Within the fund the department shall establish the following accounts, including, but not limited to:

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- (1) A fund administration account for state expenses related to administration of the fund pursuant to Section 1452(g)(2) of the federal act.
- (2) A water system reliability account for department expenses pursuant to Section 1452(g)(2)(A), (B), (C), or (D) of the federal act.
- (3) A source protection account for state expenses pursuant to Section 1452(k) of the federal act.
- (4) A small system technical assistance account for department expenses pursuant to Section 1452(g)(2) of the federal act.
- (5) A state revolving loan account pursuant to Section 1452(a)(2) of the federal act.
- (m) Deposit federal funds for administration and other purposes into separate accounts or subaccounts as allowed by the federal act.
- (n) Determine on behalf of the state whether sufficient progress is being made toward compliance with the enforceable deadlines, goals, and requirements of the federal act and the California Safe Drinking Water Act, Chapter 4 (commencing with Section 116275).

**Section 116760.41. Other expenses**

Moneys in the fund and the special accounts may be expended for additional purposes provided in the federal act.

**Section 116760.42. Department may accept federal funds**

- (a) The department may enter into an agreement with the federal government for federal contributions to the fund only if both of the following apply:
  - (1) The state has obtained or appropriated any required state matching funds.
  - (2) The department is prepared to commit to expenditure of any minimum amount in the fund in the manner required by the federal act.
- (b) Any agreement between the department and the federal government shall contain those provisions, terms, and conditions required by the federal act, and any implementing federal rules, regulations, guidelines, and policies, including, but not limited to, agreement to the following:
  - (1) Moneys in the fund shall be expended in an expeditious and timely manner.

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(2) All moneys in the fund as a result of federal capitalization grants shall be expended to ensure sufficient progress is being made toward compliance with the enforceable deadlines, goals, and requirements of the federal act, including any applicable compliance deadlines.

(3) Federal funds deposited in the special accounts are continuously appropriated for use by the department as allowed by federal law. Any unexpended funds in the special accounts shall be carried over into subsequent years for use by the department.

#### **Section 116760.43. Emergency regulation authority**

(a) The department may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code necessary or convenient to implement this chapter and to meet requirements pursuant to the federal act.

(b) The adoption of any emergency regulations that are filed with the Office of Administrative Law within 18 months of the effective date of this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

#### **Section 116760.44. Administrative fees**

The department may deposit administrative fees and charges paid by public water systems and other available and necessary money into the administrative account of the fund.

### **ARTICLE 4. PRIORITY LIST FOR FUNDING**

#### **Section 116760.50. Criteria for funding**

The department shall establish criteria that shall be met for projects to be eligible for consideration for funding under this chapter. The criteria shall include all of the following:

(a) All preliminary design work for a defined project that will enable the applicant to supply water that meets safe drinking water standards, including a cost estimate for the project, shall be completed.

(b) A legal entity shall exist that has the authority to enter into contracts and incur debt on behalf of the community to be served and owns the public water system or has the right to operate the public water system under a lease with a term of at least 20 years,

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unless otherwise authorized by the department. If the proposed project is funded by a loan under this chapter, the department may require the applicant to secure a lease for the full term of the loan if the loan exceeds 20 years.

(c) The applicant shall hold all necessary water rights.

(d) The applicant shall have completed any review required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and the guidelines adopted pursuant thereto, and have included plans for compliance with that act in its preliminary plans for the project.

(e) The applicant has assembled sufficient financial data to establish its ability to complete the proposed project and to establish the amount of debt financing it can undertake.

#### **Section 116760.60. Department must notify suppliers**

The department shall notify suppliers that may be eligible for funding pursuant to this chapter of the purposes of this chapter and the regulations established by the department.

#### **Section 116760.70. Criteria for priority list**

(a) The department, after public notice and hearing, shall, from time to time, establish a priority list of proposed projects to be considered for funding under this chapter. In doing so, the department shall determine if improvement or rehabilitation of the public water system is necessary to provide pure, wholesome, and potable water in adequate quantity at sufficient pressure for health, cleanliness, and other domestic purposes. The department shall establish criteria for placing public water systems on the priority list for funding which shall include criteria for priority list categories. Priority shall be given to projects that meet all of the following requirements:

- (1) Address the most serious risk to human health.
- (2) Are necessary to ensure compliance with requirements of Chapter 4 (commencing with Section 116270) including requirements for filtration.
- (3) Assist systems most in need on a per household basis according to affordability criteria.

(b) The department may, in establishing a new priority list, merge those proposed projects from the existing priority list into the new priority list.

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- (c) In establishing the priority list, the department shall consider the system's implementation of an ongoing source water protection program or wellhead protection program.
- (d) In establishing the priority list categories and the priority for funding projects, the department shall carry out the intent of the Legislature pursuant to subdivisions (e) and (f) of Section 116760.10 and do all of the following:
- (1) Give priority to upgrade an existing system to meet drinking water standards.
  - (2) After giving priority pursuant to paragraph (1), consider whether the applicant has sought other funds when providing funding for a project to upgrade an existing system and to accommodate a reasonable amount of growth.
- (e) Consideration of an applicant's eligibility for funding shall initially be based on the priority list in effect at the time the application is received and the project's ability to proceed. If a new priority list is established during the time the application is under consideration, but before the applicant receives a letter of commitment, the department may consider the applicant's eligibility for funding based on either the old or new priority list.
- (f) The department may change the ranking of a specific project on the priority lists at any time following the publication of the list if information, that was not available at the time of the publication of the list, is provided that justifies the change in the ranking of the project.
- (g) The department shall provide one or more public hearings on the Intended Use Plan, the priority list, and the criteria for placing public water systems on the priority list. The department shall provide notice of the Intended Use Plan, criteria, and priority list not less than 30 days before the public hearing. The Intended Use Plan, criteria, and priority list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall conduct duly noticed public hearings and workshops around the state to encourage the involvement and active input of public and affected parties, including, but not limited to, water utilities, local government, public interest, environmental, and consumer groups, public health groups, land conservation interests, health care providers, groups representing vulnerable populations, groups representing business and agricultural interests, and members of the general public, in the development and periodic updating of the Intended Use Plan and the priority list.
- (h) The requirements of this section do not constitute an adjudicatory proceeding as defined in Section 11405.20 of the Government Code and Section 11410.10 of the Government Code is not applicable.

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### **Section 116760.79. Applications**

Applications for funding under this chapter shall be made in the form and with the supporting material prescribed by the department.

### **Section 116760.80. Planning and preliminary engineering funding**

- (a) The department shall determine, based on applications received, whether a particular applicant meets the criteria to be eligible for consideration.
- (b) If the applicant does not meet the criteria, it may be considered for planning and preliminary engineering study funding. Applicants successfully completing a study are eligible for consideration for project design and construction funding after their study is completed and they have met the criteria to be eligible for consideration for project design and construction funding.

### **Section 116760.90. Project requirements and limitations**

- (a) The department shall not approve an application for funding unless the department determines that the proposed study or project is necessary to enable the applicant to meet safe drinking water standards, and is consistent with an adopted countywide plan, if any. The department may refuse to fund a study or project if it determines that the purposes of this chapter may more economically and efficiently be met by means other than the proposed study or project. The department shall not approve an application for funding a project with a primary purpose to supply or attract future growth. The department may limit funding to costs necessary to enable suppliers to meet primary drinking water standards, as defined in Chapter 4 (commencing with Section 116270).
- (b) With respect to applications for funding of project design and construction, the department shall also determine all of the following:
  - (1) Upon completion of the project, the applicant will be able to supply water that meets safe drinking water standards.
  - (2) The project is cost-effective.
  - (3) If the entire project is not to be funded under this chapter, the department shall specify which costs are eligible for funding.

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## **ARTICLE 5. PROJECT ELIGIBILITY, FUNDING, AND CONTRACTS**

### **Section 116761. Allowable costs**

Planning and preliminary engineering studies, project design, and construction costs eligible for funding under this chapter shall be established by the department and may include any of the following:

- (a) Reasonable costs for the construction, improvement, or rehabilitation of facilities of the public water system, which may include water supply, treatment works, and all or part of a water distribution system, if necessary to carry out the purposes of this chapter.
- (b) Reasonable costs associated with the consolidation of water systems, including, but not limited to, reasonable facility fees, connection fees, or similar charges.
- (c) Reasonable costs of purchasing water systems, water rights, or watershed lands.
- (d) Operation and maintenance costs only to the extent they are used in the startup and testing of the completed project. All other operation and maintenance costs shall be the responsibility of the supplier and shall not be considered as part of the project costs.
- (e) Reasonable costs of establishing eligibility for funding under this chapter that were incurred before the department entered into a commitment to fund the project under this chapter.
- (f) The acquisition of real property or interests therein only if the acquisition is integral to a project, and as otherwise limited in the federal act.

### **Section 116761.20. Evaluating ability to repay**

- (a) Planning and preliminary engineering studies, project design, and construction costs may be funded under this chapter by loans, or, in the case of public agencies, by grants or a combination of grants and loans.
- (b) The department shall determine what portion of the full costs the public agency is capable of repaying and authorize funding in the form of a loan for that amount. The department shall authorize a grant only to the extent the department finds the public agency is unable to repay the full costs of a loan.
- (c) At the request of the department, the Public Utilities Commission shall submit comments concerning the ability of suppliers, subject to its jurisdiction, to finance the project from other sources and to repay the loan.

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### **Section 116761.21. Grants**

Not more than 30 percent and not less than 15 percent, provided that there are projects eligible for funding as prescribed in Section 116760.70, of the total amount deposited in the fund may be expended for grants. This amount shall be limited to disadvantaged communities specified in Section 1452(d) of the federal act (42 U.S.C.A. Sec. 300j-12).

### **Section 116761.22. Repay periods**

Loans for project design and construction shall be repaid over a term not longer than the useful life of the project constructed or 20 years, whichever is shorter, except as provided in the federal act.

### **Section 116761.23. Maximum funding**

(a) The maximum amount of a grant permitted under this chapter for the planning and preliminary engineering studies, design, and construction of a single project is one million dollars (\$1,000,000).

(b) Total funding under this article for planning and preliminary engineering studies, project design, and construction costs of a single project, whether in the form of a loan or a grant, or both, shall be determined by an assessment of affordability using criteria established by the department.

### **Section 116761.24. Water system under 10,000 people**

Not less than 15 percent of the total amount deposited in the fund shall be expended for providing loans and grants to public water systems that regularly serve fewer than 10,000 persons to the extent those funds can be obligated for eligible projects.

### **Section 116761.40. Safe Drinking Water Act compliance not excused**

The failure or inability of any public water system to receive funds under this chapter or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of the California Safe Drinking Water Act or the federal act.

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## ARTICLE 6. CONTRACTS FOR PROJECT FUNDING

### **Section 116761.50. Contracts**

(a) The department may enter into contracts with applicants for grants or loans for the purposes set forth in this chapter. Any contract entered into pursuant to this section shall include only terms and conditions consistent with this chapter and the regulations established under this chapter.

(b) The contract shall include all of the following terms and conditions that are applicable:

(1) An estimate of the reasonable cost of the project or study.

(2) An agreement by the department to loan or grant, or loan and grant, the applicant an amount that equals the portion of the costs found by the department to be eligible for a state loan or grant. The agreement may provide for disbursement of funds during the progress of the study or construction, or following completion of the study or construction, as agreed by the parties.

(3) An agreement by the applicant to proceed expeditiously with the project or study.

(4) An agreement by the applicant to commence operations of the project upon completion of the project, and to properly operate and maintain the project in accordance with the applicable provisions of law.

(5) In the case of a loan, an agreement by the applicant to repay the state, over a period not to exceed the useful life of the project or 20 years, whichever is shorter, except as provided in the federal act, or in the case of a study, over a period not to exceed five years, all of the following:

(A) The amount of the loan.

(B) The administrative fee specified in subdivision (a) of Section 116761.70.

(C) Interest on the principal, which is the amount of the loan plus the administrative fee.

(6) In the case of a grant, an agreement by the public agency to operate and maintain the water system for a period of 20 years, unless otherwise authorized by the department.

(c) The contract may include any of the following terms and conditions:

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(1) An agreement by the supplier to adopt a fee structure that provides for the proper maintenance and operations of the project and includes a sinking fund for repair and replacement of the facilities in cases where appropriate. The fee structure shall also provide an acceptable dedicated source of revenue for the repayment of the amount of the loan, and the payment of administrative fees and interest.

(2) If the entire project is not funded pursuant to this chapter, the department may include a provision requiring the applicant to share the cost of the project or obtain funding from other sources.

(d) The department may require applicants to provide security for loan contracts.

#### **Section 116761.60. Three and five year limitations**

All funding received under this chapter shall be expended by the applicant within three years of the execution of the contract with the department or its designee. The three-year period may be extended, with the approval of the department, until five years after the date the original contract, not including amendments, was executed.

### **ARTICLE 7. SAFE DRINKING WATER STATE REVOLVING FUND MANAGEMENT**

#### **Section 116761.62. Fund management**

(a) To the extent permitted by federal and state law, moneys in the fund may be expended to rebate to the federal government all arbitrage profits required by the federal Tax Reform Act of 1986 (P.L. 99-514) or any amendment thereof or supplement thereto. To the extent that this expenditure of the moneys in the fund is prohibited by federal or state law, any rebates required by federal law shall be paid from the General Fund or other sources, upon appropriation by the Legislature.

(b) Notwithstanding any other provisions of law or regulation, the department may enter into contracts or may procure those services and equipment that may be necessary to ensure prompt and complete compliance with any provisions relating to the fund imposed by either the federal Tax Reform Act of 1986 (P.L. 99-514) or the federal Safe Drinking Water Act.

#### **Section 116761.65. Interest rate**

(a) The department shall annually establish the interest rate for loans made pursuant to this chapter at 50 percent of the average interest rate, computed by the true interest cost

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method, paid by the state on general obligation bonds issued in the prior calendar year. All loans made pursuant to this chapter shall carry the interest rate established for the calendar year in which the funds are committed to the loan, as of the date of the letter of commitment. The interest rate set for each loan shall be applied throughout the repayment period of the loan. Interest on the loan shall not be deferred.

(b) Notwithstanding subdivision (a), if the loan applicant is a public water system that is a disadvantaged community or provides matching funds, the interest rate on the loan shall be zero percent.

#### **Section 116761.70. Capitalization funds for managing program**

(a) Not more than 4 percent of the capitalization grant may be used by the department for administering this chapter. The department may establish a reasonable schedule of administrative fees for loans, which shall be paid by the applicant to reimburse the state for the costs of the state administration of this chapter.

(b) Charges incurred by the Attorney General in protection of the state's interest in the use of repayment of grant and loan funds under this chapter shall be paid. These charges shall not be paid from funds allocated for administrative purposes, but shall be treated as a program expense not to exceed one-half of 1 percent of the total amount deposited in the fund.

#### **Section 116761.80. Repayment funds for managing program**

(a) The department may expend money repaid to the state pursuant to any contract executed under Section 116761.50 as necessary for the administration of contracts entered into by the department under this chapter, but those expenditures may not in any year exceed 1.5 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

(b) Charges incurred by the Attorney General in protecting the state's interest in the use of funds and repayment of funds under this chapter may be paid by the department from these funds, but those charges may not exceed one-half of 1 percent of the amount of principal and interest projected to be paid to the state in that year pursuant to this chapter.

(c) Any of these sums unexpended by the department at the end of any year shall automatically revert to the fund.

#### **Section 116761.85. Moneys repaid return to fund**

Except as provided in Section 116761.80, all money repaid to the state pursuant to any contract executed under subdivision (a) of Section 116761.50, including interest

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payments and all interest earned on or accruing to any moneys in the fund, shall be deposited in the fund and shall be available in perpetuity, for expenditure for the purposes and uses permitted by this chapter and the federal act.

**Section 116761.86. Investment of unused moneys repaid**

To the extent amounts in the fund are not required for current obligation or expenditure, those amounts shall be invested in interest bearing obligations, and the interest earned shall become part of the fund.

**ARTICLE 8. SOURCE WATER PROTECTION PROGRAM**

**Section 116762.60. Source water protection program**

(a) The department shall, contingent upon receiving federal capitalization grant funds, develop and implement a program to protect sources of drinking water. In carrying out this program, the department shall coordinate with local, state, and federal agencies that have public health and environmental management programs to ensure an effective implementation of the program while avoiding duplication of effort and reducing program costs. The program shall include the following:

(1) A source water assessment program to delineate and assess the drinking water supplies of public drinking water systems pursuant to Section 1453 of the federal act.

(2) A wellhead protection program to protect drinking water wells from contamination pursuant to Section 1428 of the federal act.

(3) Pursuant to Section 1452(k) of the federal act, the department shall set aside federal capitalization grant funds sufficient to carry out paragraphs (1) and (2) of subdivision (a).

(b) The department shall set aside federal capitalization grant funds to provide assistance to water systems pursuant to Section 1452 (k) of the federal act for the following source water protection activities, to the extent that those activities are proposed:

(1) To acquire land or a conservation easement if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with primary drinking water regulations.

(2) To implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to Section 1453 of the federal act, in order to facilitate

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compliance with primary drinking water regulations applicable to the water system under Section 1412 of the federal act or otherwise significantly further the health protection objectives of the federal and state acts.

(3) To carry out a voluntary, incentive-based source water quality protection partnership pursuant to Section 1454 of the federal act.

(c) The department shall conduct duly noticed public hearings, public workshops, focus groups, or meetings around the state to encourage the involvement and active input of public and affected parties in the development and periodic updating of the source water protection program adopted pursuant to this article. The notices shall contain basic information about the program in an understandable format and shall notify widely representative groups, including, but not limited to, federal, state, and local governmental agencies, water utilities, public interest, environmental, and consumer groups, public health groups, land conservation groups, health care providers, groups representing vulnerable populations, groups representing business and agricultural interests, and members of the general public. In addition, the department shall convene a technical advisory committee and a citizens' advisory committee made up of those representative groups to provide advice and direction on program development and implementation.

(d) The department shall submit a report to the Legislature every two years on its activities under this section. The report shall contain a description of each program for which funds have been set aside under this section, the effectiveness of each program in carrying out the intent of the federal and state acts, and an accounting of the amount of set aside funds used.

## CHAPTER 5. WATER EQUIPMENT AND CONTROL

### ARTICLE 2. CROSS-CONNECTION CONTROL BY WATER USERS

#### **Section 116800. Control of Users**

Local health officers may maintain programs for the control of cross-connections by water users, within the users' premises, where public exposure to drinking water contaminated by backflow may occur. The programs may include inspections within water users premises for the purpose of identifying cross-connection hazards and determining appropriate backflow protection. Water users shall comply with all orders, instructions, regulations, and notices from the local health officer with respect to the installation, testing, and maintenance of backflow prevention devices. The local health officer may collect fees from those water users subject to inspection to offset the costs of implementing cross-connection control programs.

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**Section 116805. Fees**

- (a) Local health officers may maintain programs, in cooperation with water suppliers, to protect against backflow through service connections into the public water supply, and, with the consent of the water supplier, may collect fees from the water supplier to offset the costs of implementing these programs.
- (b) The fees authorized under this section and under Section 116800 shall be limited to the costs of administering these programs. At the discretion of the water supplier, the fees collected from the water supplier by the local health officer may be passed through to water users.
- (c) Programs authorized under this section and Section 116800 shall be conducted in accordance with backflow protection regulations adopted by the department.
- (d) Nothing in this article shall prevent a water supplier from directly charging those water users required to install backflow prevention devices for the costs of the programs authorized in this section and Section 116800.

**Section 116810. Certification of device testers**

To assure that testing and maintenance of backflow prevention devices are performed by persons qualified to do testing and maintenance, local health officers may maintain programs for certification of backflow prevention device testers. The local health officer may suspend, revoke, or refuse to renew the certificate of a tester, if, after a hearing before the local health officer or his or her designee, the local health officer or his or her designee finds that the tester has practiced fraud or deception or has displayed gross negligence or misconduct in the performance of his or her duties as a certified backflow prevention device tester. The local health officer may collect fees from certified testers to offset the cost of the certification program provided pursuant to this section. The certification standards shall be consistent with the backflow protection regulations adopted by the department.

**Section 116815. Purple pipe for reclaimed water**

- (a) All pipes installed above or below the ground, on and after June 1, 1993, that are designed to carry recycled water, shall be colored purple or distinctively wrapped with purple tape.
- (b) Subdivision (a) shall apply only in areas served by a water supplier delivering water for municipal and industrial purposes, and in no event shall apply to any of the following:
  - (1) Municipal or industrial facilities that have established a labeling or marking system

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for recycled water on their premises, as otherwise required by a local agency, that clearly distinguishes recycled water from potable water.

(2) Water delivered for agricultural use.

(c) For purposes of this section, "recycled water" has the same meaning as defined in subdivision (n) of Section 13050 of the Water Code.

### **Section 116820. Violations**

Any person who violates any provision of this article, violates any order of the local health officer pursuant to this article, or knowingly files a false statement or report required by the local health officer pursuant to this article is guilty of a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding 30 days in the county jail or by both such fine and imprisonment. Each day of a violation of any provision of this article or of any order of the local health officer beyond the time stated for compliance of the order shall be a separate offense.

## **ARTICLE 3. WATER TREATMENT DEVICES**

### **Section 116825. Definitions**

Unless the context otherwise requires, the following definitions shall govern construction of this article:

(a) "Water treatment device" means any point of use or point of entry instrument or contrivance sold or offered for rental or lease for residential use, and designed to be added to the plumbing system, or used without being connected to the plumbing of a water supply intended for human consumption in order to improve the water supply by any means, including, but not limited to, filtration, distillation, adsorption, ion exchange, reverse osmosis, or other treatment. "Water treatment device" does not include any device that is regulated pursuant to Article 12 (commencing with Section 111070) of Chapter 5 of Part 5.

(b) "Department" means the Department of Health Services.

(c) "Person" means any individual, firm, corporation, or association, or any employee or agent thereof.

(d) "Contaminants" means any health-related physical, chemical, biological, or radiological substance or matter in water.

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**Section 116830. Regulation authority**

(a) The department shall adopt regulations setting forth the criteria and procedures for certification of water treatment devices that are claimed to affect the health or safety of drinking water. The regulations shall include appropriate testing protocols and procedures to determine the performance of water treatment devices in reducing specific contaminants from public or private domestic water supplies. The regulations may adopt, by reference, the testing procedures and standards of one or more independent testing organizations if the department determines that the procedures and standards are adequate to meet the requirements of this section. The regulations may specify any testing organization that the department has designated to conduct the testing of water treatment devices.

(b) The regulations required by subdivision (a) shall include minimum standards for the following:

- (1) Performance requirements.
- (2) Types of tests to be performed.
- (3) Types of allowable materials.
- (4) Design and construction.
- (5) Instruction and information requirements, including operational, maintenance, replacement, and estimated cost of these items.
- (6) Any additional requirements, not inconsistent with this article, as may be necessary to carry out this article.

(c) The department or any testing organization designated by the department pursuant to this section may agree to evaluate test data on a water treatment device offered by the manufacturer of the water treatment device, in lieu of the requirements of this section, if the department or the testing organization determines that the testing procedures and standards used to develop the data are adequate to meet the requirements of this section.

**Section 116835. Certification requirements and exemptions**

(a) No water treatment device that makes product performance claims or product benefit claims that the device affects health or the safety of drinking water, shall be sold or otherwise distributed that has not been certified by the department or by another entity in accordance with subdivision (b). Water treatment devices not offered for sale or

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distribution based on claims of improvement in the healthfulness of drinking water need not be certified pursuant to this section.

(b) The department may accept a water treatment device certification issued by an agency of another state, by an independent testing organization, or by the federal government in lieu of its own, if the department determines that certification program meets the requirements of this article.

(c) A water treatment device initially installed prior to the operative date of this section shall not require certification pursuant to Section 116830.

(d) Subdivisions (a), (b), and (c) shall become operative one year after the effective date of the regulations adopted pursuant to Section 116830. Regulations adopted pursuant to that section shall be transmitted to the Legislature upon adoption.

#### **Section 116840. Enforcement**

(a) The department, or any local health officer with the concurrence of the department, shall enforce this article.

(b) The department may suspend, revoke, or deny a certificate upon its determination of either of the following:

(1) That the water treatment device does not perform in accordance with the claims made under the standard.

(2) That the manufacturer, or any employee or agent thereof, has violated this article, any regulation adopted pursuant to this article, or Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

(c) Any person, corporation, firm, partnership, joint stock company, or any other association or organization that violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of the conduct is a separate and distinct violation. The civil penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(d) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel, the entire amount of penalties collected shall be paid to the treasurer of the county in which

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the judgment was entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county and one-half to the city.

(e) Unless otherwise provided, the remedies or penalties provided by this article are cumulative to each other and to remedies or penalties available under all other laws of this state.

#### **Section 116845. List of devices**

The department shall publish a list of water treatment devices certified under this article, including the specific standard under which the device is certified.

#### **Section 116850. Fees**

The department shall charge and collect a fee for each certificate applied for which shall be an amount reasonably necessary to produce sufficient revenue to effectively implement this article.

#### **Section 116855. Consultation in developing regulations**

In developing regulations pursuant to this article, the department shall seek the consultation of representatives from the industry regulated under the article, from drinking water purveyors, and from persons with expertise and experience in promoting public health.

#### **Section 116860. Water Device Certification Special Account**

There is in the State Treasury the Water Device Certification Special Account. Fees collected pursuant to Section 116850 shall be deposited in the account created by this section.

#### **Section 116865. Loan for implementation**

The Director of Finance may authorize the department to borrow up to two hundred thousand dollars (\$200,000) for the purpose of implementing this article from any fund or account deemed appropriate by the Director of Finance. The department shall repay the loan with interest to be determined in accordance with Section 16314 of the Government Code.

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## **ARTICLE 4. LEAD MATERIALS**

### **Section 116875. Lead pipes, plumbing, and solder**

(a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

### **Section 116880. Regulation authority**

The department shall adopt building standards to implement Section 116875. The standards shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be published in the State Building Standards Code located in Title 24 of the California Code of Regulations. The standards shall be enforced by the appropriate state and local building and health officials.

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